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1 IN THE CIRCUIT COURT FOR THE 11TH JUDICIAL CIRCUIT  
2 IN AND FOR DADE COUNTY, FLORIDA

3 GENERAL JURISDICTION DIVISION

4 Case No. 00-01706 CA 22

5  
6 LYNN FRENCH,

7 Plaintiff,

8 vs.

9 PHILIP MORRIS INCORPORATED,

("PHILIP MORRIS U.S.A."),

10 R.J. REYNOLDS TOBACCO COMPANY,

LORILLARD TOBACCO CO., and

11 BROWN & WILLIAMSON TOBACCO

CORP., Individually and as Successor

12 to the AMERICAN TOBACCO COMPANY,

13 Defendants.

14 ----- /  
15 VOLUME 7

PROCEEDINGS BEFORE

16 THE HONORABLE FREDRICKA G. SMITH

17 June 6, 2002

9:30 a.m. to 12:30 p.m.

18  
19  
20  
21  
22  
23  
24 73 West Flagler Street

Court Room 6-2

25 Miami, Florida 33130

1 Appearances:  
 2 On Behalf of the Plaintiff:  
 3 GROVER WEINSTEIN & TROP  
 4 66 West Flagler Street  
 5 Concord Building, 7th Floor  
 6 Miami, Florida 33131  
 7 (305) 377-4840  
 8 BY: MARVIN WEINSTEIN, ESQ.  
 9 ADAM TROP, ESQ.  
 10 RHONDA WEINSTEIN, ESQ.  
 11  
 12 On Behalf of the Defendants Philip Morris  
 13 Incorporated ("Philip Morris U.S.A.") and  
 14 Lorillard Tobacco Co.:  
 15 SHOOK HARDY & BACON  
 16 201 South Biscayne Boulevard  
 17 Miami, Florida 33131  
 18 (305) 358-5171  
 19 BY: KENNETH REILLY, ESQ.  
 20 GAY TEDDER, ESQ.  
 21 On Behalf of the Defendant R.J. Reynolds  
 22 Tobacco Company:  
 23 WOMBLE CARLYLE SANDRIDGE & RICE, LLP  
 24 One West Fourth Street  
 25 Winston-Salem, North Carolina 27101  
 (336) 721-3549  
 BY: JONATHAN ENGRAM, ESQ.  
 On Behalf of the Defendant Brown & Williamson  
 Tobacco Corp., Individually and as Successor to  
 the American Tobacco Company:  
 ADORNO & YOSS, P.A.  
 2601 South Bayshore Drive, Suite 1600  
 Miami, Florida 33133  
 (305) 858-5555  
 BY: WILLIAM C. McCUE, ESQ.

1 (Jury not present)  
 2 THE COURT: Have a seat everyone. I wasn't  
 3 sure whether the jurors were all here, but apparently  
 4 they are.  
 5 Who will be your first witness?  
 6 MR. TROP: Mr. Brown, Edward Jason Brown.  
 7 THE COURT: Somehow I thought we had already  
 8 taken him because of the proffer, but he hasn't  
 9 appeared before the jury.  
 10 (Jury present.)  
 11 THE COURT: Everyone have a seat. Good  
 12 morning.  
 13 JURORS: Good morning.  
 14 THE COURT: Will the plaintiff call your  
 15 next witness, please?  
 16 MR. TROP: Yes, your Honor. We call Edward  
 17 Jason Brown.  
 18 Thereupon,  
 19 EDWARD JASON BROWN,  
 20 called as a witness by the plaintiff, being first duly  
 21 sworn, testified as follows:  
 22 DIRECT EXAMINATION  
 23 BY MR. TROP:  
 24 Q Good morning, Mr. Brown.  
 25 A Good morning.

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1 Q Could you state your full name for the record  
 2 and for the jury?  
 3 A Edward Jason Brown.  
 4 Q Mr. Brown, tell the jury where you live.  
 5 A I live in **DELETED**  
 6 Q Mr. Brown, I understand you are a retired  
 7 airline pilot?  
 8 A Yes. From Northwest Airlines.  
 9 Q Could you tell the jury generally your  
 10 particular background and experience with regard to  
 11 airplanes?  
 12 A I was an aircraft mechanic in 1971 with the  
 13 Air Force, servicing, maintaining, maintenance in  
 14 large passenger aircraft. After four years in the Air  
 15 Force, I went to the Army as a pilot. In the Army I  
 16 was a maintenance officer. I maintained, was in  
 17 charge of seven multimillion-dollar aircraft, the  
 18 personnel and maintenance. I was also a test pilot.  
 19 Then after the Army I was a police officer.  
 20 I flew a police aerial assault team. And then after  
 21 the police, I was a Civil Service flight instructor,  
 22 GS 12. Then after that I was an airline pilot for  
 23 Atlantic Southeast Airlines, a Delta Connection; then  
 24 with Republic Airlines and we merged with Northwest  
 25 Airlines. I have about 25 years basic experience.

1 Q Mr. Brown, are you a licensed pilot?  
 2 A Yes, I am. Yes, I am, licensed airline  
 3 transport pilot.  
 4 Q Is that for private and commercial airlines?  
 5 A Yes. I am licensed to fly all single,  
 6 multi-engine aircraft.  
 7 Q Do you have any other licenses or ratings  
 8 with respect to airplanes or airlines?  
 9 A I also hold a flight engineer's rating where  
 10 I maintain all the systems in flight on a Boeing 727,  
 11 a turbojet airliner.  
 12 Q You said 727. Could you just basically  
 13 describe what kind of -- I think most people probably  
 14 heard it, what kind of airline that is and tell the  
 15 jury about your experience flying 727's.  
 16 A Well, it is roughly 144 passengers. Most of  
 17 the airlines used it and it is a pretty good airliner.  
 18 I was the flight engineer on that probably about two  
 19 years.  
 20 Q What years basically did you fly the 727's?  
 21 A I think from around 1987 to 1989.  
 22 Q When you were a pilot and worked on 727's,  
 23 was smoking permitted in the cabins?  
 24 A Yes, it was.  
 25 Q Could you tell the jury basically what your

1 flashlight to get around?  
 2 A Yes, indeed. When it is dark, most of those  
 3 flights were in the morning, the redeye or so. To  
 4 see, I would need to shine my flashlight. As you  
 5 recalled, they have the lights, the row lighting. You  
 6 have to follow the lights with your flashlight and see  
 7 where you are going.  
 8 Q Now, you said a moment ago that the smoke  
 9 would make your eyes water. Did it have any other  
 10 physical affects on you?  
 11 A I was bothered, my sinuses.  
 12 Q Did you notice any of the same visual --  
 13 visually did you notice any of the same things  
 14 happening to other flight attendants, to flight  
 15 attendants or passengers?  
 16 A Yes, I did. It's a terrible job to be there  
 17 walking back and forth. We sit down when we are  
 18 flying, but flight attendants walk everywhere they go  
 19 and I noticed a lot of problems. Nasal congestion.  
 20 Q As one of your responsibilities on the  
 21 flight, were you in charge of what we have been  
 22 calling the no smoking signs?  
 23 A You know, I don't remember. I don't remember  
 24 where that switch was.  
 25 Q Are you aware of whether from time to time

1 responsibilities -- aside from being a pilot, but what  
 2 your responsibilities were that would from time to  
 3 time take you into the cabin?  
 4 A I would respond to the flight attendants  
 5 queries or if they asked me to come back to note  
 6 anything that's wrong with the airplane, any strange  
 7 noises, irate passengers, passenger requests and their  
 8 overall being uncomfortable.  
 9 Q Were you familiar with the conditions on the  
 10 727 when smoking was permitted, as you said, in '87,  
 11 '88, '89?  
 12 A Yes. Especially on long flights. I flew  
 13 from Detroit to San Francisco, Detroit-Seattle, four  
 14 and a half, five hour flights, and as I would come out  
 15 of the cockpit door with my flashlight, I would see a  
 16 smoke-filled cabin and the easy way to describe that  
 17 is like a smoke filled barroom. Your eyes would  
 18 water, your vision was impaired.  
 19 One thing about a barroom, you can walk  
 20 around or even leave the barroom, but in the aircraft,  
 21 in its confined cabin, you just have to stay there.  
 22 Right in it. There is n where to go. Changing seats  
 23 wouldn't make a difference.  
 24 Q You mentioned your having your flashlight.  
 25 Were there times when you actually needed this

1 there had been requests to turn on the no smoking  
 2 sign?  
 3 A Yes.  
 4 Q Under what circumstances would that happen?  
 5 A You have all the smoke in there and you  
 6 couldn't do anything with it, it's just there, so to  
 7 limit the conditions, we had to turn on the no smoking  
 8 sign until everybody put them out, if we got too many  
 9 complaints.  
 10 Q You mentioned seeing visually what happened  
 11 to people and seeing the smoke. Did you ever see any  
 12 evidence of the smoke on anything inside the plane?  
 13 A Yes. As a flight engineer, I inspected the  
 14 aircraft before a flight. I checked the cabin vents,  
 15 the gas pers, the air vents, individual air vents, a  
 16 brown substance would appear to be tar or nicotine  
 17 along the side walls of the aircraft from I guess the  
 18 front of that wall there all the way back here maybe,  
 19 that's how long the airplane is, and on the sides you  
 20 see vents, louvres, and you see the stains on there as  
 21 well.  
 22 Q Mr. Brown, are you aware if the 727, for  
 23 instance, had any ventilation systems that would do  
 24 something with the air?  
 25 A It didn't do much to the smoke. It

1 distributed the air, but the smoke was still there.

2 Q That was going to be my next question. What  
3 effect, if any, did these ventilation systems or  
4 whatever kind of system they are going to call it,  
5 what effect did it have on the smoke in the air as you  
6 described earlier?

7 A Practically none.

8 Q Mr. Brown, did you have opportunities to fly  
9 on 727's and other airplanes since the domestic  
10 smoking ban in 1990?

11 A Yes, of course.

12 Q Have you noticed any differences between the  
13 air quality before 1990 and after 1990?

14 A Yes, indeed. As a matter of fact, Northwest  
15 was the first airline to ban the smoking. We had an  
16 aggressive attempt to clean up everything, all the  
17 airplanes, including the upholstery, the pillows and  
18 all that were stained and smelly.

19 So it was cleaned up after that and we are  
20 proud of that and it was one of our marketing tools.

21 Q Mr. Brown, you and I just met yesterday; is  
22 that correct?

23 A Yes.

24 Q Do you have any kind of stake or interest or  
25 anything in the outcome of this litigation against the

1 the environmental control systems on the aircraft; is  
2 that correct?

3 A That's correct.

4 Q You talked about being in the Army on direct  
5 exam?

6 A Yes.

7 Q But you didn't fly commercial jet aircraft in  
8 the Army; is that correct?

9 A That's correct. Well, I did fly. I was in  
10 the Army National Guard and with the airlines also.

11 Q But you weren't the pilot on those flights,  
12 correct?

13 A Yes, I was.

14 Q But those aren't commercial jet aircraft,  
15 correct?

16 A I'm saying while I was in the Army National  
17 Guard, I was also an airline pilot currently.

18 Q When you were in the National Guard, the only  
19 plane that you flew held two people, correct?

20 A That's correct.

21 Q You didn't fly for a commercial airline until  
22 you flew for Atlantic Southeastern Airlines; is that  
23 correct?

24 A That's correct.

25 Q That was a Delta Connection commuter?

1 tobacco companies?

2 A No, I don't.

3 Q Have you known Ms. French for more than a  
4 day?

5 A No, I met her yesterday.

6 MR. TROP: Thank you very much, sir.

7 THE WITNESS: Thank you.

8 THE COURT: Just a moment. You may inquire.

9 CROSS-EXAMINATION

10 BY MS. TEDDER:

11 Q Good morning, Mr. Brown.

12 A Good morning. How are you?

13 Q I am fine. How are you today?

14 A Fine, thank you.

15 Q Good.

16 You said on direct exam that you had  
17 previously been in the Air Force; is that correct?

18 A That's correct.

19 Q But you were not an Air Force pilot?

20 A That's correct, I was not.

21 Q You were a mechanic in the Air Force,  
22 correct?

23 A Yes.

24 Q When you were in the Air Force, were you not  
25 one of the mechanics who specialized in maintaining

1 A Yes.

2 Q You started with them in 1985?

3 A Yes.

4 Q You are no longer a pilot, correct?

5 A That's correct.

6 Q You haven't flown a commercial aircraft since  
7 1995, correct?

8 A That's correct.

9 Q So your commercial flying career lasted  
10 approximately between 1985 and 1995; isn't that  
11 correct?

12 A Yes.

13 Q You went to work for Republic Airlines in  
14 1986?

15 A Yes.

16 Q Within two to three years after you joined  
17 Republic Airlines, they merged with Northwest  
18 Airlines, correct?

19 A Yes.

20 Q Northwest Airlines banned smoking on all of  
21 their domestic flights on April 23, 1988, correct?

22 A The ones less than two hours.

23 Q In fact, isn't it true, Mr. Brown, that  
24 Northwest banned smoking not just on flights of two  
25 hours in 1988, but on all of their domestic flights on

1 March 23, 1988, isn't that correct?  
 2 A I am not sure.  
 3 Q You are not sure?  
 4 A No.  
 5 Q Okay. Well, let me see if I can refresh your  
 6 recollection.  
 7 MS. TEDDER: May I approach, your Honor?  
 8 THE COURT: You may.  
 9 Q I would like for you to take a look at this.  
 10 MR. TROP: Your Honor, may I see what that  
 11 is?  
 12 THE COURT: Of course.  
 13 MS. TEDDER: Shall I show it to him?  
 14 THE COURT: Please.  
 15 Q Just let me know when you have had an  
 16 opportunity to review it.  
 17 A Okay. Read the whole thing?  
 18 Q No, I don't think you have to read the whole  
 19 thing. You just have to read through here, that first  
 20 paragraph.  
 21 A Okay, thank you.  
 22 Q Does that, Mr. Brown, refresh your  
 23 recollection that Northwest banned smoking not just on  
 24 flights of two hours or less, but on all of their  
 25 domestic flights as of March 23, 1988?

1 A I'm still not certain.  
 2 Q But if that's what the record reflects, you  
 3 don't have any reason to dispute that, do you?  
 4 A No, I don't.  
 5 Q Assuming that's correct, then, you worked on  
 6 commercial aircraft for only two to three years when  
 7 smoking was allowed on domestic flights, correct?  
 8 That would be correct, yes?  
 9 I'm sorry, you have to answer audibly for the  
 10 reporter?  
 11 A I haven't done the math, but if you have done  
 12 it.  
 13 Q '85 to '88, about three years?  
 14 A Three years, yes.  
 15 Q You don't know anything about Ms. French's  
 16 exposure to second-hand smoke while a flight  
 17 attendant; is that correct?  
 18 A No, I don't.  
 19 Q You don't know what routes Ms. French flew?  
 20 A No, I don't.  
 21 Q You don't know what aircraft Ms. French flew  
 22 on as a flight attendant?  
 23 A I assume she flew on a 727.  
 24 Q Other than that, you don't know about any  
 25 other aircraft she flew on?

1 A No, I don't.  
 2 Q If she flew on the L-1011, you were never a  
 3 pilot on that aircraft; is that correct?  
 4 A No, I never was.  
 5 Q You don't know anything about the ventilation  
 6 system on that aircraft, correct?  
 7 A No, I don't.  
 8 Q If she flew on the 747, you were never a  
 9 pilot on that aircraft; is that correct?  
 10 A That's correct.  
 11 Q You don't know anything about the ventilation  
 12 system on that aircraft, correct?  
 13 A Well, the 747 is the same as the 727.  
 14 Q But you are not specifically familiar with  
 15 the ventilation system on a 747, correct?  
 16 A No, I am not.  
 17 Q And you don't know anything about how often  
 18 the air was completely replaced in the cabin on a 747,  
 19 correct?  
 20 A No, I don't.  
 21 Q And you don't know that about an L-1011  
 22 either; is that correct?  
 23 A No, I don't.  
 24 Q The same thing would be true for a 757,  
 25 correct?

1 A That's correct.  
 2 Q The same thing would be true for the MD-80,  
 3 correct?  
 4 A No.  
 5 Q You were never a pilot on the MD-80; is that  
 6 correct?  
 7 A That's correct.  
 8 Q All right.  
 9 A It's the same DC-9 extended.  
 10 Q In the airplane that you flew for Atlantic  
 11 Southeastern, that was called a short 360; is that  
 12 correct?  
 13 A Yes, it was.  
 14 Q That plane only held 35 people, correct?  
 15 A Approximately, yes.  
 16 Q You were not the captain on the short 360,  
 17 correct?  
 18 A That's correct.  
 19 Q When you flew the 727, you weren't the  
 20 captain or the second officer, correct?  
 21 A Yes, I was the second officer.  
 22 Q I'm sorry, you weren't the captain, you were  
 23 the second officer, correct?  
 24 A Yes, I was.  
 25 Q You don't know whether any of the aircraft

1 Ms. French flew on were airplanes with a one pass  
 2 circulation system, do you?  
 3 A No, I don't.  
 4 Q You don't know how many of those would have  
 5 recirculated air, if any; is that correct?  
 6 A No, I don't.  
 7 Q You talked a little bit on direct exam about  
 8 flight attendants talking about smoke on the aircraft;  
 9 do you recall that testimony?  
 10 A You can refresh me some.  
 11 Q You talked a little bit on direct exam about  
 12 what you saw in the cabin, okay, and what you observed  
 13 when smoke was on the aircraft, correct?  
 14 A Yes.  
 15 Q When you flew for Northwest Airlines, you  
 16 flew, you mentioned, the 727, correct?  
 17 A Yes.  
 18 Q And that plane, I think you said, held about  
 19 144 people, correct?  
 20 A Yes.  
 21 Q And on that plane the pilot can control the  
 22 ventilation system, correct?  
 23 A We did, I believe, yes.  
 24 Q And the pilot could increase the ventilation  
 25 if he chose to do so, correct?

1 A We can adjust it for passenger comfort.  
 2 Q Okay, and you could in fact increase it if  
 3 you chose to do so, correct?  
 4 A Increase what?  
 5 Q The ventilation in the aircraft.  
 6 A We increased the temperature, things like  
 7 that.  
 8 Q You could in fact increase the ventilation,  
 9 couldn't you, Mr. Brown?  
 10 A I don't know if that's a good enough  
 11 statement, to increase the ventilation. We can do  
 12 things to adjust it is mainly what we do.  
 13 Q Do you recall giving a deposition in this  
 14 case?  
 15 A Yes.  
 16 Q Do you recall that that deposition was taken  
 17 on January 21?  
 18 A Yes, I do.  
 19 Q Do you recall in that deposition being asked  
 20 the following question and giving the following  
 21 answer:  
 22 This is page 99, line 13 through 15. Do you  
 23 recall being asked the following question and giving  
 24 the following answer:  
 25 "Q. You could increase the ventilation if

1 you chose?  
 2 "A. Yes, airflow."  
 3 Do you recall giving that answer to that  
 4 question?  
 5 A Yes.  
 6 Q And that testimony was true and correct when  
 7 you gave it, correct?  
 8 A Yes. To the best of my knowledge.  
 9 Q And it is true today, correct?  
 10 A Yes.  
 11 Q The captain could also turn on the no smoking  
 12 sign, correct?  
 13 A Yes.  
 14 Q If there were problems.  
 15 And if the plane recirculated air, you could  
 16 turn off the recirculation, correct?  
 17 A There was a recirculation switch that if  
 18 something were to fail, if the system were to fail,  
 19 you can allow it to recirculate or stop recirculating,  
 20 I believe.  
 21 Q So if in fact you thought there were problems  
 22 with the smoke on the airplane and the plane  
 23 recirculated air, you could turn off the  
 24 recirculation, correct?  
 25 A No. No.

1 Q Okay. Again, I would ask you if you recall  
 2 giving a deposition in this case on January 21, 2001?  
 3 A Yes, I do.  
 4 Q Again, I am looking at page 99, lines 19  
 5 through 21.  
 6 Do you recall being asked the following  
 7 question and giving the following answer:  
 8 "Q. You could, if the plane recirculated  
 9 air, turn off the recirculation fans, couldn't  
 10 you?  
 11 "A. Yes."  
 12 Do you recall giving that answer to that  
 13 question on January 21, 2001?  
 14 A Yes. As I stated, there is a recirculating  
 15 fan switch which you have the ability to turn on and  
 16 off.  
 17 Q Okay.  
 18 A But within a set procedure, not at your  
 19 discretion.  
 20 Q You could also adjust -- if you thought there  
 21 were problems with smoke on the aircraft, could you  
 22 also adjust the pressurization, increasing the rate,  
 23 correct?  
 24 A The rate of discharge, yes.  
 25 Q And it's also true, isn't it, Mr. Brown, that

1 if you received complaints, you did just those things  
 2 we mentioned, correct?  
 3 A Those things I had available to me for  
 4 passenger comfort.  
 5 Q I'm sorry, I don't mean to cut you off.  
 6 A Okay. To adjust the ventilation, the cabin  
 7 pressurization for passenger comfort, yes.  
 8 Q And you didn't just have them available, you  
 9 in fact did those things we mentioned, correct?  
 10 A Certainly.  
 11 Q You also said on direct exam, I think, that  
 12 you observed smoke in the cabin of the aircraft,  
 13 correct?  
 14 A That's correct.  
 15 Q Your job was in the cockpit, not in the  
 16 cabin, correct?  
 17 A No. My job is throughout the entire aircraft  
 18 as assigned.  
 19 Q I'm sorry, you stop and I think it's my turn  
 20 to talk, so I don't mean to cut you off.  
 21 A Okay.  
 22 Q Would it be fair to say that you spent most  
 23 of your time in the cockpit and not in the cabin?  
 24 A That would be fair to say, yes.  
 25 Q In fact, you would characterize your trips to

1 the cabin as an infrequent occurrence?  
 2 A Yes.  
 3 Q And in fact when you worked for Atlantic  
 4 Southeast Airlines, the average length of the flight  
 5 you flew was approximately an hour, correct?  
 6 A That's correct.  
 7 Q When you were working for Atlantic  
 8 Southeastern Airlines flying an hour or so at most,  
 9 you could often go through an entire flight without  
 10 going to the back of the cabin, correct?  
 11 A Atlantic Southeast Airlines, yes.  
 12 Q You also, on those occasions when you were in  
 13 the cabin, in the front of the cabin, and there was  
 14 smoke in the cabin, you could still see the back of  
 15 the airplane, correct?  
 16 A Yes.  
 17 Q You mentioned a couple of problems that I  
 18 think you had when you were exposed to smoke on direct  
 19 exam, correct; do you remember talking about stuffy  
 20 nose?  
 21 A Yes.  
 22 Q When you are not around smoke you don't have  
 23 those problems, correct?  
 24 A That's correct.  
 25 MS. TEDDER: If you will give me just a

1 moment, your Honor.  
 2 Thank you. I am finished.  
 3 THE WITNESS: Thank you.  
 4 THE COURT: Is there anything further?  
 5 MR. TROP: Yes. Just very briefly.  
 6 REDIRECT EXAMINATION  
 7 BY MR. TROP:  
 8 Q Mr. Brown, Ms. Tedder referred to your  
 9 deposition where you gave some answers and I guess you  
 10 had to refresh your recollection.  
 11 Do you remember giving your deposition?  
 12 A Yes, I do.  
 13 Q It was Mr. Gerrity who was asking you  
 14 questions?  
 15 A Yes.  
 16 Q How long did that deposition go?  
 17 A About five months.  
 18 Q How long did the actual questioning go?  
 19 A About four and a half hours they drilled me.  
 20 Q That was up in Atlanta?  
 21 A Yes.  
 22 Q You mentioned also that there were times when  
 23 you would be affected by the smoke yourself?  
 24 A Yes.  
 25 Q You as a pilot, did you have anything you

1 could do to alleviate the problems you had?  
 2 A I was fortunate, I could go up to the cockpit  
 3 and get on my oxygen mask and breathe and clear my  
 4 problems up.  
 5 Q Did the passengers and flight attendants have  
 6 that same capability?  
 7 A No.  
 8 Q You were asked a little bit about the  
 9 ventilation system. Did you have the authority or do  
 10 any of the pilots have the authority to just flick it  
 11 on and flick it off at any time they felt they wanted  
 12 to?  
 13 A No.  
 14 Q Do you have some kind of procedure that you  
 15 needed to do?  
 16 A We have to follow procedure. Everything we  
 17 do is -- most everything we do is by procedure.  
 18 Q Is that obviously for safety reasons of the  
 19 people on board?  
 20 A Yes. Yes.  
 21 MR. TROP: Thank you very much, Mr. Brown.  
 22 THE WITNESS: You are welcome.  
 23 THE COURT: You may be excused.  
 24 THE WITNESS: Thank you.  
 25 (Witness excused)

1 THE COURT: Call your next witness, please.  
 2 Who will that be?  
 3 MR. REILLY: May we have a brief side bar?  
 4 THE COURT: We can have a brief side bar  
 5 conference, but you can get your next witness in.  
 6 (At the sidebar.)  
 7 MR. REILLY: Your Honor, I object very  
 8 strenuously to the questioning of these witnesses  
 9 about the length of their depositions. It's  
 10 highly improper. It is highly improper for these  
 11 witnesses to say "I was grilled for four hours."  
 12 It's completely inappropriate.  
 13 THE COURT: I think it has to be relevant to  
 14 something. Like if they say -- if they are  
 15 saying now that what they said at deposition was  
 16 wrong or they were confused or something like  
 17 that, then it may be relevant how long the  
 18 deposition was or how it was conducted, but  
 19 otherwise, I don't think it has that much  
 20 relevance.  
 21 MR. ENGRAM: They had opportunities to read  
 22 and sign the deposition and make any corrections.  
 23 THE COURT: Wait a minute. He didn't say  
 24 that. He wasn't saying now at trial that his  
 25 deposition testimony was wrong or anything, so I

1 agree that it was kind of -- what's the word I am  
 2 trying to think of? Not fortuitous, the word  
 3 that sounds like fortuitous. Anyway, I think  
 4 it's like thrown in there.  
 5 MR. TROP: Judge, in cross-examination by  
 6 Ms. Tedder, she took two very small points on a  
 7 200 page deposition where he answered yes and  
 8 didn't put like a yes comma and some other little  
 9 explanation. He didn't have it exactly right, so  
 10 she cross-examined him in an attempt to impeach  
 11 him and make him look perhaps dishonest. So I  
 12 have the right to -- either dishonest or  
 13 ignorant.  
 14 So I have the right to explain to him, to  
 15 let the jury know that he was asked hours and  
 16 hours and hours of questions and these are two  
 17 little things that he just misspoke about and did  
 18 not recall. That's perfectly proper.  
 19 MR. REILLY: No, it is completely improper.  
 20 That is exactly what the rules don't permitted.  
 21 The case law is replete that you cannot simply  
 22 say to someone was your deposition lengthy, was  
 23 it grueling?  
 24 THE COURT: You can under certain  
 25 circumstances. Frankly, I didn't think there was

1 much impeachment.  
 2 MR. REILLY: True.  
 3 THE COURT: In other words, I don't think  
 4 that there was a need to rehabilitate him in the  
 5 sense of explaining how long the deposition was.  
 6 Anyway, let's go on. I don't know if this  
 7 will come up again or not. Only if it bears some  
 8 connection to the questioning.  
 9 I see the plaintiff's position is that he  
 10 was impeached. I don't think he was very greatly  
 11 impeached, but whatever.  
 12 MR. TROP: It wasn't lengthy, but still it  
 13 was an attempt to --  
 14 THE COURT: But he didn't say "I had trouble  
 15 understanding the questions" or "I was tired."  
 16 You know, he didn't say anything like that. I  
 17 thought it was gratuitous. That's the word I was  
 18 trying to think of, gratuitous.  
 19 MR. REILLY: Your Honor, people making  
 20 comments like I was grilled for four hours.  
 21 THE COURT: That came from the witness, it  
 22 didn't come from the question.  
 23 MR. REILLY: That's what I mean. Everybody  
 24 would have to be asleep at the switch to think  
 25 that that was something that was done without

1 knowledge, that question and answer.  
 2 THE COURT: That it was done what?  
 3 MR. REILLY: That it was done without  
 4 knowledge.  
 5 THE COURT: You mean he asked the question  
 6 expecting he was going to answer that way?  
 7 MR. TROP: We will bring him in and ask him  
 8 if we talked that way.  
 9 MR. REILLY: We have had two witnesses who  
 10 said she was grilled for an hour and a half, it  
 11 seemed like three hours, and now we have a second  
 12 witness who says "I was grilled for four hours."  
 13 This is not a coincidence.  
 14 THE COURT: This is not my view.  
 15 MR. TROP: I would request to bring him in  
 16 outside of the jury.  
 17 THE COURT: No, I happen to take your  
 18 position. Let's go ahead.  
 19 (Continued on next page.)  
 20  
 21  
 22  
 23  
 24  
 25



1 (Jury present.)  
 2 Thereupon,  
 3 KATE JEWEL,  
 4 called as a witness by the plaintiff, being first duly  
 5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. WEINSTEIN:  
 8 Q Please state your name.  
 9 A Kate Jewel.  
 10 Q Where do you live?  
 11 A

12 DELETED  
 13  
 14  
 15  
 16

17 A It's probably about as far away from here as  
 18 you can get.

19 Q I guess there is Hawaii.

20 A That's true. I mean the contiguous states.

21 Q The jury has already heard a lot of testimony  
 22 from other airline attendants, so I am going to try to  
 23 be brief.

24 Tell the jury about your background, your  
 25 family background.

1 forward, so to speak.

2 A Okay.

3 Q In 1976 and thereon, up until approximately  
 4 1990, what were the circumstances and conditions  
 5 regarding smoking on the aircraft that you flew and  
 6 tell the jury the type of aircraft that you did fly.

7 A I flew 727's. I believe I was still flying  
 8 707's. I'm not sure when I started flying DC-10's,  
 9 but sometime in that timespan.

10 Q Was smoking permitted between 1976 up to  
 11 approximately 19 -- well, 1988, '89, '90?

12 A Yes.

13 Q How about international, was it permitted up  
 14 until about 1995 or '96?

15 A It was permitted longer on the international  
 16 flights.

17 Q During the period of time that smoking was  
 18 permitted between the years that you mentioned,  
 19 explain to the jury where the smoking sections were  
 20 and what the general atmosphere was like. As I said,  
 21 they heard testimony already, so I am trying to move  
 22 things along.

23 A I don't remember exactly when smoking  
 24 sections started, so I'm not sure if the time period  
 25 that I am supposed to talk about is in when there was

1 A My family background?

2 Q Yes. In other words, what does your family  
 3 consist of, who lives home with you, children, things  
 4 like that?

5 A I am single and I have two cats.

6 Q What is your present occupation?

7 A I am a flight attendant.

8 Q Tell the jury how long you have been a flight  
 9 attendant and really just summarize your history with  
 10 being a flight attendant and who you were employed  
 11 with from the first days and up until now.

12 A I have been a flight attendant with American  
 13 Airlines since July of 1970 and I continue to be so  
 14 today.

15 Q So that's approximately 30 years you have  
 16 been a flight attendant?

17 A It will be 32 at the end of July.

18 Q Tell the jury the type of aircraft that you  
 19 have worked on as a flight attendant throughout the  
 20 years.

21 THE COURT: Excuse me for interrupting. How  
 22 about limiting to the time that we are concerned  
 23 with?

24 MR. WEINSTEIN: Yes, thank you, Judge.

25 Q Let's try to limit your testimony from 1976

1 no smoking sections, but in the beginning of the  
 2 smoking sections it was like half the cabin was  
 3 designated smoking, the other half was designated  
 4 nonsmoking.

5 Q Were there separate smoking sections in first  
 6 class?

7 A Yes. The last couple of rows of first class  
 8 might be -- depending upon how big first class was.

9 Q Was there also a separate smoking section in  
 10 business class?

11 A I never flew business class.

12 Q How about in what we call, what's the other  
 13 class?

14 A Coach.

15 Q Coach. Tell the jury whether or not there  
 16 was a separate section?

17 A Approximately the last half of coach was  
 18 designated smoking when they started designating that  
 19 there were sections.

20 Q Tell the jury generally what your duties were  
 21 as a flight attendant.

22 A We served the cabin from a galley that was in  
 23 the back, except for one aircraft, always in the back  
 24 half of the airplane where the smoking section was.  
 25 We would travel through the smoke, usually starting

1 the service in the beginning of the cabin working  
2 back.

3 Q What was the general environment over those  
4 years in terms of your being subjected, you along with  
5 other airline attendants, what was the environment  
6 like?

7 A You couldn't escape it. Even if you were in  
8 the first row of coach, there would be smoke from the  
9 last row of first class. It was all over the  
10 airplane. It was heavier in the smoking sections, but  
11 it was everywhere.

12 Q Could you actually see the smoke as you  
13 walked through those --

14 A You could see it, you could smell it.

15 Q What did it do to you personally, you in  
16 particular? What effect did it have on you?

17 A Every time I would leave a flight, my clothes  
18 would smell, my skin would smell, my hair would smell.

19 Q How about your eyes and your system?

20 A I couldn't wear my contacts because my eyes  
21 would be too dry and they would burn.

22 Q Were there times in which you, as a result of  
23 the smoking condition that you had requested that the  
24 pilots turn on the no smoking sign?

25 A When it would get so much that we could

1 A Yes.

2 Q What happened to airline attendants when you  
3 were moving carts -- the jury has heard that type of  
4 testimony, when you were pushing carts up and back and  
5 serving people, what were you -- what were airline  
6 attendants, such as you and others, subjected to in  
7 terms of second-hand smoke from the passengers?

8 A Well, if you were serving in a smoking  
9 section, it was right in your face a lot of times, and  
10 certainly when walking through it, you were just  
11 walking through the cloud, especially in the smoking  
12 section. It wasn't quite as noticeable in the  
13 nonsmoking section, but it was still in the air.

14 Q Would passengers frequently get up and  
15 exercise who were smoking and walk through the  
16 nonsmoking sections?

17 A Oh, they liked to congregate by the galley.  
18 They thought that they could come back there and just  
19 have a cigarette and chitchat.

20 Q Was the smoking of passengers such that you  
21 were usually or you had on occasion sustained any  
22 burns to your clothes or your hands?

23 A I didn't, but a flight attendant that I  
24 worked with did.

25 Q Would you frequently see cigarettes in ash

1 almost like not breathe, we would ask them to turn the  
2 no smoking section on to clear the air, but it was  
3 very, very slow to clear the air and basically  
4 negligible.

5 Q When you did request that something be done,  
6 it had virtually no effect?

7 A Very little to none.

8 Q Were you advised or did you have the  
9 understanding that there was some sort of ventilation  
10 system?

11 A Yes.

12 Q Were you able to appreciate, did you notice  
13 whether or not the ventilation system on the aircraft  
14 improved to any appreciable degree the smoking  
15 conditions when the ventilation system was on or off?

16 A I did not.

17 Q Could you see, for example, as a result of  
18 the ventilation system, could you see the smoke being  
19 drawn anywhere and fresh air being pumped in?

20 A Not at all. Not at all. It was just too big  
21 a cloud.

22 Q Could you see the smoke actually just sort  
23 of --

24 A It would hover.

25 Q It would hover?

1 trays smoldering?

2 A Oh, absolutely. And I thought that was a  
3 safety risk also as well as a health risk.

4 Q You say smoldering, what do you mean by  
5 smoldering? I know I used the word.

6 A A lit cigarette sitting there burning with  
7 the plume of smoke coming up.

8 Q And of course you could see the smoke coming  
9 from the people who were exhaling?

10 A Of course.

11 Q Would you frequently be subjected to smoke  
12 being exhaled right directly as you were serving, in  
13 your face?

14 A Often times you would ask somebody what they  
15 wanted to drink or wanted for dinner and they would  
16 exhale as they told you.

17 Q Ms. Jewel, did you frequent -- I am going to  
18 ask you whether -- did you notice the type of  
19 cigarettes that most people -- well, that the people  
20 smoked?

21 A I pretty much saw every American brand that I  
22 can think of.

23 Q Did you see, for example, Kool?

24 MR. ENGRAM: Your Honor, I object to leading.  
25 If she is asked what brand she saw and she can tell,

1 fine, but to suggest the answer in the question is  
 2 leading.  
 3 THE COURT: No, I don't think so.  
 4 Q Did you see frequently a Kool?  
 5 A Yes.  
 6 Q Lucky Strike?  
 7 A Yes.  
 8 Q Pell Mall?  
 9 A Yes.  
 10 Q Raleigh?  
 11 A Yes.  
 12 Q Richland?  
 13 A Yes.  
 14 Q Viceroy?  
 15 A Yes.  
 16 Q Kent?  
 17 A Yes.  
 18 Q Newport?  
 19 A Yes.  
 20 Q Old Gold?  
 21 A Yes.  
 22 Q The first group is Brown and Williamson. The  
 23 second group was Lorillard.  
 24 Philip Morris. Marlboro?  
 25 A Yes.

1 Q Benson & Hedges?  
 2 A Yes.  
 3 Q Chesterfield?  
 4 A Yes.  
 5 Q Virginia Slims?  
 6 A Yes.  
 7 Q That's Philip Morris.  
 8 And R.J. Reynolds: Camels?  
 9 THE COURT: There is no objection, but you  
 10 can't say what they are.  
 11 MR. WEINSTEIN: It is in the record, Judge.  
 12 THE COURT: It doesn't matter.  
 13 Q R.J. Reynolds: Camels?  
 14 A Yes.  
 15 Q Doral?  
 16 A Yes.  
 17 Q Winston?  
 18 A Yes.  
 19 Q Salem?  
 20 A Yes.  
 21 Q Virtually all of the American brands that I  
 22 have just named; is that correct?  
 23 A Yes.  
 24 Q Do you know Lynn French?  
 25 A I didn't meet her before coming here.

1 MR. WEINSTEIN: Judge, may I have a moment?  
 2 THE COURT: You may.  
 3 Q Just one last question. I promised to keep  
 4 it short and I think I did.  
 5 After the ban, tell the jury how -- after the  
 6 ban on smoking, after it was finally banned, tell the  
 7 jury what the conditions were with regard to smoke on  
 8 airlines.  
 9 A You are talking about after it has been  
 10 banned internationally also?  
 11 Q Yes. Yes. Tell how the air conditioning and  
 12 the circumstances got better or improved.  
 13 Well, was there any smoke, was there any  
 14 smoke there after it was banned?  
 15 A No. The air felt cleaner, seemed cleaner. I  
 16 personally experienced maybe less colds -- definitely  
 17 less colds and sinus kind of problems than I had in  
 18 the years that I flew in smoke.  
 19 Q When there was smoke there, you had off and  
 20 on problems with your sinuses?  
 21 A Yes.  
 22 Q After the ban you didn't have those problems  
 23 anymore; isn't that correct?  
 24 A Maybe once a year versus ten times.  
 25 MR. WEINSTEIN: Thank you very much.

1 THE COURT: Any questions?  
 2 MR. ENGRAM: Yes, your Honor.  
 3 CROSS-EXAMINATION  
 4 BY MR. ENGRAM:  
 5 Q Good morning, Ms. Jewel. I am Jonathan  
 6 Engram. We met three days ago; is that right?  
 7 A Yes, we did.  
 8 Q I just want to go over some things about your  
 9 work history.  
 10 Number one, you never worked as a flight  
 11 attendant for TWA, did you?  
 12 A I did not.  
 13 Q You flew your entire career with American  
 14 Airlines?  
 15 A Yes, I did. Yes, I do.  
 16 Q You did not meet the plaintiff, Lynn French,  
 17 sitting next to Mr. Weinstein, until you came here to  
 18 Miami this week, correct?  
 19 A I met her Monday night.  
 20 Q In fact, you did not even know her name until  
 21 you came to Miami this week to testify?  
 22 A That's correct.  
 23 Q You do know, however, the lady seated in the  
 24 first row next to Mr. Brown, don't you?  
 25 A I'm sorry?

1 Q Lani Blissard?  
 2 A Yes, I do.  
 3 Q You have known Lani Blissard since the 70's,  
 4 correct?  
 5 A Correct.  
 6 Q In fact, you are good friends with Lani  
 7 Blissard?  
 8 A True.  
 9 Q And it was Ms. Blissard who recommended you  
 10 as a witness to Ms. Weinstein, correct?  
 11 A Correct.  
 12 Q You came all the way from Orcas Island,  
 13 Washington to Miami, Florida, correct?  
 14 A Correct.  
 15 Q That island is almost all the way to Canada,  
 16 right?  
 17 A That's right.  
 18 Q So if you look at a map of the United States,  
 19 you came from the northern most tip on the Pacific  
 20 Ocean in the continental United States to the  
 21 southernmost tip on the Atlantic Ocean on the East  
 22 Coast?  
 23 A Yes, I did.  
 24 Q And you didn't even know her name before you  
 25 got here?

1 A I did not.  
 2 Q Let's focus on the time you were with  
 3 American based in San Diego from 1976 to 1994, okay?  
 4 A Okay.  
 5 Q You flew on the Boeing 707, the DC-10, the  
 6 Boeing 727 and the Boeing 767, didn't you?  
 7 A Yes, I did.  
 8 Q From that period, during that period of time,  
 9 1976 to 1994, when smoking sections were in place, you  
 10 did not fly the L-1011 or the Boeing 747, did you?  
 11 A I did not.  
 12 Q In fact, the plane you preferred to fly when  
 13 you were based in San Diego was the 767, correct?  
 14 A Correct.  
 15 Q And that was because there was never any  
 16 smoke on that airplane domestically and because it was  
 17 more flight attendant friendly as far as design; is  
 18 that correct?  
 19 A When you asked me that question in the  
 20 deposition, I wasn't thinking years. So when I first  
 21 started flying the 767, there was some smoke on it,  
 22 but it was a newer airplane and the period I was  
 23 thinking about was 1995 to '99 when I was flying trans  
 24 cons out of San Francisco that were not smoking.  
 25 Q When I asked you the question at page 32 of

1 your deposition or when the question was asked of you  
 2 at that time:  
 3 "Q. Was there any particular plane you  
 4 preferred flying on during your San Diego period?"  
 5 Okay, that would be through 1994, correct?  
 6 A Correct.  
 7 Q You said:  
 8 "A. The 767."  
 9 "Q. Why?"  
 10 "A. There was never any smoke on that  
 11 airplane domestically and also because it was a better  
 12 plane to -- it was the more flight attendant friendly  
 13 airplane as far as design."  
 14 A Right.  
 15 Q Was that your answer Monday night?  
 16 A That was my answer Monday night and when you  
 17 said San Diego, I heard San Francisco. That was  
 18 somewhat true in San Diego also.  
 19 Q You know nothing about airplane ventilation  
 20 systems technically, correct?  
 21 A I do not. I only know what I experienced.  
 22 Q You don't know whether an airplane had a one  
 23 pass system or a recirculation system, do you?  
 24 A I don't know.  
 25 Q Do you know anything about air exchange rates

1 on airplanes?  
 2 A Just that they are bad.  
 3 Q Again, page 51 of your deposition, Ms. Jewel.  
 4 Do you remember the question I asked you and the  
 5 answer that you gave, page 51, line 6:  
 6 "Q. Do you know anything about the air  
 7 exchange rates on any of these airplanes?"  
 8 "A. No, I do not."  
 9 A That is correct, I do not.  
 10 MR. TROP: Your Honor, I believe it is the  
 11 same answer.  
 12 THE COURT: The jury will consider it.  
 13 Q You don't know how many rows were designated  
 14 for smoking on the Boeing 727 at any time, do you?  
 15 A It would vary.  
 16 Q You have no idea about which type of  
 17 airplanes Lynn French flew at TWA, do you?  
 18 A I do not.  
 19 Q You don't know where Ms. French has been  
 20 based over the course of her career, do you?  
 21 A No.  
 22 Q You have no idea what route she flew over the  
 23 course of her career, do you?  
 24 A No, I don't.  
 25 Q You don't have any idea what mix of

1 international or domestic flights she flew, do you?  
 2 A I don't.  
 3 Q And you have no idea how many smokers were on  
 4 any of the flights that she flew, do you?  
 5 A I do not.  
 6 Q Do you know what position she worked on the  
 7 aircraft during the course of her career?  
 8 A I do not.  
 9 Q Now, on average, how many hours a month did  
 10 you fly during this time period, 1976 to 1994?  
 11 A 67 to 75.  
 12 Q And on average, you would work what, 12, 14  
 13 days a month?  
 14 A Correct.  
 15 Q And you have never worked as a flight  
 16 attendant on a flight to or from Hawaii, correct?  
 17 A That's correct.  
 18 Q You said that the smoke was noticeable,  
 19 correct?  
 20 A I did.  
 21 Q You could see it, you could taste it and you  
 22 could smell it, correct?  
 23 A That's true.  
 24 Q And you said that the two most memorable  
 25 things about it were, number one, the way you smelled

1 your hair and your skin and, number two, the way your  
 2 clothes smelled when you got off the airplane,  
 3 correct?  
 4 A That was the most memorable for me because I  
 5 didn't like smelling like that.  
 6 Q Mr. Weinstein asked you at the end of his  
 7 direct examination about sinus problems. You have  
 8 never been diagnosed with chronic sinusitis, have you?  
 9 A I have not.  
 10 Q In fact, during your entire career as a  
 11 flight attendant, you saw an ear, nose and throat  
 12 doctor only on one occasion when you were based in San  
 13 Diego, correct?  
 14 A Correct.  
 15 Q And he helped you figure out what your sinus  
 16 problem was, correct?  
 17 A For that specific instance, yes.  
 18 Q Yes. And your problem was that you had a  
 19 deviated septum in your nose and the ear, nose and  
 20 throat doctor wanted to do surgery, correct?  
 21 MR. WEINSTEIN: Your Honor, may I -- excuse  
 22 me, I will wait.  
 23 THE COURT: You may answer.  
 24 A That was the ear, nose and throat doctor,  
 25 that's what he told me, along with some other things.

1 Q And you never had any sinus surgery to  
 2 correct your deviated septum, correct?  
 3 A Correct.  
 4 MR. ENGRAM: Nothing further.  
 5 THE COURT: Redirect?  
 6 MR. WEINSTEIN: Yes.  
 7 REDIRECT EXAMINATION  
 8 BY MR. WEINSTEIN:  
 9 Q Ms. Jewel, have you ever flown on any other  
 10 airline such as Delta, TWA, et cetera?  
 11 A Yes.  
 12 Q Was there anything different about the smoky  
 13 conditions from airline to airline?  
 14 A No. What I was saying to be pretty generic  
 15 for what thousands of us experienced.  
 16 Q The same?  
 17 A The same kind of conditions. I know that  
 18 from talking to other airline flight attendants and  
 19 from flying on other airlines.  
 20 Q When Mr. Engram asked you about your health  
 21 conditions, how you were affected, whether your  
 22 sinuses were affected, are you aware of the sinus  
 23 problems that other airline attendants experienced?  
 24 MR. REILLY: Objection.  
 25 MR. ENGRAM: Objection.

1 THE COURT: Sustained. Don't answer,  
 2 please.  
 3 Q Now, counsel also asked you questions about  
 4 you coming from across the country?  
 5 A Right.  
 6 Q Tell the jury why you are here and  
 7 testifying.  
 8 A I am here to tell the truth of what it was  
 9 like back then, the conditions as they were, as I  
 10 experienced them, and what I experienced as a result  
 11 of being in the smoke; that regardless of what studies  
 12 or whatever, I know what I experienced and it was a  
 13 condition where I, as a nonsmoker, would come off the  
 14 airplane smelling and smelling like smoke, air, skin,  
 15 clothes.  
 16 Q Ms. Jewel, did you just think it was the  
 17 right thing to do?  
 18 A It was absolutely the right thing to do.  
 19 Q To come here to tell the jury what it was  
 20 like?  
 21 A Yes. So far I have been lucky and I know  
 22 there are thousands that have not been as lucky as I.  
 23 MR. REILLY: Objection, your Honor.  
 24 THE COURT: Sustained.  
 25 MR. WEINSTEIN: I have no further questions.

1 THE COURT: You may be excused.  
 2 THE WITNESS: Thank you.  
 3 (Witness excused.)  
 4 THE COURT: Call your next witness, please.  
 5 MR. WEINSTEIN: The next witness is Dr.  
 6 Michael Persky.  
 7 MR. REILLY: While we are waiting for Dr.  
 8 Persky, can we have a short recess?  
 9 THE COURT: How does the jury feel, does  
 10 anyone need a recess? We have only been going  
 11 for an hour.  
 12 MR. REILLY: I still would like a short  
 13 meeting.  
 14 Thereupon,  
 15 MICHAEL A. PERSKY, M.D.,  
 16 called as a witness by the plaintiff, being first duly  
 17 sworn, testified as follows:  
 18 (At the side bar.)  
 19 MR. REILLY: Your Honor, in spite of the  
 20 sustaining of my objection, I think it's  
 21 necessary to move for a mistrial at this time.  
 22 THE COURT: I will overrule your objection.  
 23 I know what you are referring to, it was  
 24 gratuitous again. She was just waiting to get  
 25 that in.

1 MR. REILLY: That's right.  
 2 THE COURT: I don't think it is a basis for  
 3 a mistrial, but I understand your point.  
 4 I guess that ends the testimony by the  
 5 flight attendants except for the plaintiff  
 6 herself and I would tell you, plaintiff's  
 7 counsel, that you must tell your client that she  
 8 is not to volunteer about how thousands of others  
 9 are sick.  
 10 MR. WEINSTEIN: Judge, most respectfully,  
 11 may I say this? When they opened the door --  
 12 THE COURT: They didn't open the door and  
 13 they didn't ask the question that called for  
 14 that, she just gave the answer.  
 15 MR. WEINSTEIN: What I am saying is, you  
 16 will recall her question to her of well, you  
 17 don't have a problem, you never experienced any  
 18 kind of sinus or difficulty problem.  
 19 I respectfully submit that opened the door  
 20 as wide as you can open up a door.  
 21 THE COURT: I disagree.  
 22 MR. WEINSTEIN: Because the implication is  
 23 she didn't have any problem.  
 24 THE COURT: That's your opinion. My  
 25 opinion is it didn't open any door like that and

1 I am going to ask you to please make sure that  
 2 when your client testifies, she doesn't refer to  
 3 all of these other people.  
 4 Now, during her testimony, if you think  
 5 something came up that allows you to ask that,  
 6 you approach the bench.  
 7 MR. WEINSTEIN: Sure. Certainly. Thank  
 8 you.  
 9 (Jury present.)  
 10 THE COURT: I see everyone has taken a  
 11 break. I didn't think we needed a break. We  
 12 have to wait for the jurors. I don't want to  
 13 take a big break because it takes us so long to  
 14 reconvene, so if you don't mind, we will just sit  
 15 here and wait for the jurors to come back.  
 16 (Pause.)  
 17 All right, we will begin.  
 18 DIRECT EXAMINATION  
 19 BY MR. WEINSTEIN:  
 20 Q Doctor, would you please state your name and  
 21 your professional address?  
 22 A Yes. My name is Michael A. Persky, M.D. My  
 23 professional address **DELETED**  
 24  
 25 Q Doctor, are you a duly licensed practicing

1 physician in the State of California?  
 2 A Yes.  
 3 Q Doctor, for the benefit of the jury, would  
 4 you please give them the benefit of your background  
 5 and training?  
 6 Let me first ask you this. Are you married?  
 7 A Yes. I have been married for it will be 12  
 8 years July 28.  
 9 Q Do you have any children?  
 10 A I have two daughters, aged five and seven.  
 11 Q Doctor, would you please tell the jury or  
 12 give the jury the benefit of your background and  
 13 training in the medical field?  
 14 A Yes. I went -- I attended UCLA for my  
 15 undergraduate premedical education and went to medical  
 16 school in Atlanta, Georgia at Emory University.  
 17 I went back to Los Angeles for my residency  
 18 training in ear, nose and throat and head and neck  
 19 surgery. You may hear the term otolaryngology. I  
 20 spent five years at Los Angeles County USC Medical  
 21 Center, where I was trained in head and neck surgery  
 22 and ear, nose and throat.  
 23 I have been in practice in Encino, California  
 24 for the past 17 years, since 1985, in private  
 25 practice. The first 12 years of my practice I had two

1 associates, Dr. Laurence Pleet and Dr. Walter Deshell.  
2 For the past five years I have been in practice for  
3 myself.

4 Q Doctor, you mentioned otolaryngology.

5 A Otolaryngology.

6 Q Explain what that involves.

7 A Well, O-T-O means ear and larynx is the  
8 throat. And ology is the study of. So it's the study  
9 of the ear and throat. It used to be called  
10 otorhinolaryngology, rhino being nose, which is ear,  
11 nose and throat, but it was shortened for obvious  
12 reasons.

13 Q Doctor, are you usually, is your specialty  
14 referred to generally as an ENT?

15 A Yes. It encompasses both the medical  
16 treatment of ear, nose and throat complaints as well  
17 as the surgical treatment of problems that are found  
18 in the ears, nose and throat.

19 Q How about the upper respiratory system?

20 Let me ask you this. Doctor, are you Board  
21 certified?

22 A Yes, I am.

23 Q What does Board certified mean?

24 A In America, there is a governing board that  
25 governs over the Boards of different medical

1 learning to be in the specialty that you are in?

2 A Both doctors and medical students.

3 Q They would be doctors that you instruct that  
4 are hoping to achieve the board certification, would  
5 that be correct?

6 A Correct.

7 Q Doctor, do you perform surgery?

8 A Yes, I do.

9 Q Does your field, specialty involve the  
10 treatment and diagnosis of problems with the sinuses?

11 A Yes, it does.

12 Q Does the sinuses include what is called the  
13 upper respiratory tract or system of the human body?

14 A Yes, it does.

15 Q Doctor, we have some diagrams. I would like  
16 you to -- do you believe that a diagram of the sinus  
17 area will aid you in describing the sinus cavity, will  
18 it aid you in describing it to the jury?

19 A I think it will make clearer my explanation  
20 to the court and the jury.

21 Q Which diagram do you think will aid you in  
22 describing the sinuses?

23 A Having never seen them in this context, I  
24 believe that one is probably sufficient.

25 Q Okay.

1 specialties and to become Board certified you have to  
2 go through an accredited M.D. training program as well  
3 as an accredited residency training program.

4 In otolaryngology, that involves a one year  
5 internship and then four years of intensive residency  
6 study in the field of otolaryngology.

7 Once you have completed that and have  
8 documented enough surgical cases and study hours by  
9 your department chairman at the university, you are  
10 then eligible to take an examination before the  
11 American Board of Otolaryngology.

12 That examination for me took place in 1986 in  
13 Chicago. It took place over two days. There is a  
14 three-part written examination followed by a full day  
15 of oral examination, and based upon your scores on the  
16 examination, along with your training, the Board  
17 decides whether to issue you your Board certification.

18 Q Are you on the staffs of any hospitals?

19 A Yes, I am. I am on the active staff of  
20 Encino Tarzana Medical Center. They have two  
21 campuses, one in Encino and one in Tarzana.

22 I am also on staff at LA County USC Medical  
23 Center, I am an assistant clinical instructor for  
24 medical students and residents.

25 Q So you actually teach doctors who are

1 THE COURT: It's good right where it is and  
2 that way I can see it, the jury can see it, the  
3 witness can see it and the attorneys can move  
4 around if you need to.

5 Can you see it from there? You might face  
6 it a little bit more toward the witness.

7 Can the jurors see it?

8 JURORS: Yes.

9 MR. WEINSTEIN: Judge, may I have the  
10 witness come down?

11 THE COURT: Of course. You may step down.  
12 BY MR. WEINSTEIN:

13 Q Doctor, could you describe, as you look at  
14 this diagram, to the jury the sinuses, that is, the  
15 sinus anatomy in a typical person?

16 A Okay. The nasal sinuses are air-containing  
17 rooms inside of our skulls, particularly our face. We  
18 have sinuses over our cheeks called maxillary sinuses,  
19 which are illustrated here. They are actually usually  
20 the largest sinuses in our heads.

21 Then between our eyes, in this area, the  
22 upper part of our nose, there is a group of sinuses  
23 called ethmoid sinuses, and they are like little,  
24 maybe the size of your fingernail, circular or varied  
25 shaped cells, and there may be ten to 20 of these

1 little compartments on each side separated by a very  
2 thin little bone.

3 The third set of paired sinuses that we have  
4 are directly above our eyebrows. They are called  
5 frontal sinuses. They could be fairly large. They  
6 could be small. In some people they are not even  
7 present.

8 Lastly, there is a deep-seated sinus called  
9 the sphenoid sinus, and that is, if you went in the  
10 nose straight back, as far back as you can go, to the  
11 back of the throat, actually, just in the upper part  
12 going back to the back of the throat is where the  
13 sphenoid sinus is located.

14 All of these sinuses drain out into the nose,  
15 particularly you can see right here the cheek sinuses,  
16 the maxillary sinuses drain through the small opening,  
17 which is actually in reality often times the size of a  
18 ballpoint pen. Sometimes it could be bigger.

19 But the sinuses do drain into this area  
20 between these stretchers that you see on the side wall  
21 of the nose. These stretchers on the side wall of the  
22 nose are called turbinates. There is three turbinates  
23 on each side. There is an inferior turbinate, a  
24 middle turbinate and a superior turbinate.

25 As far as we are concerned today, the key

1 passages.

2 ••• What cilia do is help move mucus across our  
3 respiratory tract passage to remove dirt and dust and  
4 smog and pollution and other things that might lodge  
5 in our respiratory passages.

6 Q Doctor, based upon your background and  
7 training, education, what you have read, are cilia  
8 affected by tobacco smoke?

9 A Yes, they are. They are paralyzed by tobacco  
10 smoke.

11 Q Generally speaking, are you aware of the  
12 constituent or compounds or chemicals that are in  
13 tobacco smoke?

14 A I know that there are up to 3- or 4,000  
15 different chemical compounds. I am not aware of all  
16 of them. Certainly tar and nicotine are the most  
17 common, but no, I am not an expert on all of the  
18 components in tobacco smoke.

19 Q Do you know the number of chemicals,  
20 approximately, that are in tobacco smoke and their  
21 effect overall?

22 A I just mentioned 3- to 4,000 different  
23 chemicals and certainly many of them have different  
24 effects.

25 Q What kind of effects are you talking about?

1 turbinates are the inferior turbinate, we are seeing  
2 it on a different angle here, it is a thin piece of  
3 bone that comes down surrounded by lining, and above  
4 that is the middle turbinate, which again is a thin  
5 piece of bone surrounded by lining.

6 Most of the sinuses drain out into the nose  
7 between this middle turbinate and inferior turbinate.

8 Q Are there such, this jury has heard some  
9 mention of the word cilia.

10 A Yes.

11 Q Tell the jury what that is.

12 A May I sit down?

13 Q Yes.

14 A Before I sit down, I didn't notice this  
15 before, but here are the numerous different little  
16 cell compartments that I described as being in the  
17 ethmoid sinuses between the nose.

18 Q Tell the jury what cilia means, what it is  
19 and what their function is.

20 A Certainly in medical school we learn lots of  
21 terminology basically translating common words into  
22 medical terms.

23 In lay terms, what cilia are little hairs.

24 They are hair cells. They are living cells that  
25 actually move on the lining of our respiratory

1 In other words, are there irritants, specifically, are  
2 there up to 40 chemicals, chemical irritants of those  
3 chemicals that you are aware of?

4 A Yes.

5 Q Based on your background and training, are  
6 those 40 other chemicals, can they cause serious  
7 illness?

8 A Yes, they certainly can.

9 Q Doctor, we have heard, the jury has heard on  
10 opening statement from Mr. Reilly that, well, the  
11 sinuses, that air that people breathe in doesn't go to  
12 the sinuses because it doesn't move in and out like  
13 the lungs. Could you tell the jury whether that's so,  
14 what Mr. Reilly said is so or not?

15 MR. REILLY: I object to the form, your  
16 Honor.

17 THE COURT: Sustained. Rephrase, please.

18 Q Doctor, does air that people breathe in, is  
19 it well known, do you know whether or not air that we  
20 breathe in enters the sinuses?

21 A Yes, it does. In fact, our current thoughts  
22 on treating sinus disease is to actually open up those  
23 small openings of the sinuses to allow air, more air  
24 to get in to that lining.

25 We know that the lining of the sinuses, when



1 exposed to air, becomes relatively normal and when the  
2 lining of the sinuses are blocked from air, the lining  
3 becomes swollen and abnormal. So in you and I, if we  
4 have normal sinuses, air is getting in there keeping  
5 that lining normal.

6 Certainly having been a specialist in this  
7 field for 17 years and being a gentleman who in  
8 earlier days enjoyed smoking cigars, I personally am  
9 no longer able to smoke cigars because when I do  
10 that --

11 MR. REILLY: Objection, your Honor.

12 A I develop --

13 THE COURT: Just one moment.

14 MR. REILLY: Objection, your Honor.

15 THE COURT: Sustained.

16 I'm sorry, I didn't mean to interrupt you.

17 Next question.

18 Q If someone, based on your knowledge,  
19 background and training, if somebody smoked a  
20 cigarette or cigar, does it enter the sinuses and  
21 cause damage?

22 A Yes.

23 Q Tell the jury how and why.

24 A Well, it causes irritation to that small  
25 opening into the sinus, preventing air to get in once

1 correct?

2 A Correct.

3 Q Now, Doctor, did you have the occasion to  
4 treat Lynn French professionally?

5 A Yes, I did.

6 Q Did you bring your medical records with you?

7 A Yes, I did.

8 Q Were those medical records maintained by you  
9 contemporaneously, that is, the records that you have  
10 brought with you, were they made at the time that you  
11 were treating her and made -- in a manner that is  
12 usual and customary for doctors in your specialty?

13 A Yes.

14 Q Doctor, what's the first date that you saw  
15 Lynn French?

16 A The first date that Lynn French was in our  
17 offices was June 26, 1989, at which time she was seen  
18 by my associate, Dr. Laurence Pleet.

19 The first time that I actually saw Mrs.  
20 French was on August 9, 1989.

21 Q Doctor, on initially seeing her in your  
22 office by you or others, was a history taken?

23 A Yes. A history was taken by my nursing  
24 staff.

25 Q Doctor, what is a history?

1 the irritating damaging irritants are in there,  
2 causing irritation, swelling, pain, pressure in the  
3 head and often times sinusitis.

4 Q On an educational basis, have you ever seen  
5 studies, diagrams that illustrate and visualize the  
6 flow of air through the nose and into the sinuses?

7 A Yes. There are very well documented  
8 videotapes where a small camera has been placed  
9 actually through what we call the canine fossa, which  
10 is a small area underneath the lip here into the  
11 sinus. Through that small hole a blue dye or black  
12 particles have been placed into the cheek sinus and a  
13 video camera has watched that dye and black  
14 particulate matter be pushed out of the sinus up  
15 through the natural opening and out into the nose.  
16 The rate of that movement has been documented.

17 Q Is it well established in the scientific  
18 medical community that air that people breathe in,  
19 smoke that people breathe in does indeed enter the  
20 sinuses and it causes the damage that you have  
21 mentioned?

22 A Yes.

23 Q So if somebody -- somebody, anybody were to  
24 state that it doesn't go in because the sinuses don't  
25 move in and out, that would not be so; is that

1 A A history of a patient is like other  
2 histories. It tries to find out as much information  
3 about that patient as possible, particularly as to  
4 pertaining to their problems.

5 Q Doctor, how important is it to take a  
6 thorough history?

7 A It's very, very, very important. It's the  
8 first thing that's taught in medical school and in  
9 residency, that before doing any tests, before doing  
10 anything to a patient, as a physician you need to talk  
11 to the patient and find out about their history.

12 Q In taking a history, is it usual and  
13 customary and mandated that you find out what the  
14 occupation of a patient is?

15 A Yes.

16 Q Why is that?

17 A Well, there are certain diseases that are  
18 related to certain occupations. Certainly people that  
19 worked in the asbestos field developed certain forms  
20 of cancer. People who work outside in the sunshine  
21 are more prone to develop skin cancer. People that  
22 inhale certain irritants are more likely to develop  
23 certain diseases.

24 Q I want you to assume that Dr. Stammberger,  
25 hired by the defendants, has testified that for the

1 last ten years he doesn't even ask the occupation of  
2 any of his patients. I want to ask you whether that  
3 is usual and customary and does it abide by or conform  
4 to the usual standards required of a doctor?

5 MR. REILLY: Objection, your Honor.

6 Mischaracterization of Dr. Stammberger's  
7 testimony. I object to the form of the question  
8 because it mischaracterizes Dr. Stammberger's  
9 testimony.

10 THE COURT: Since I haven't seen this part  
11 of the testimony, I am going to have to sustain  
12 the objection, unless you show me it. I will  
13 sustain the objection at this point.

14 Q Doctor, on the first occasion that you saw  
15 Lynn French -- let me ask it this way. What history  
16 was initially taken of Lynn French?

17 A Again, are you asking me the first time she  
18 was seen in our office or the first time that you I  
19 saw her?

20 THE COURT: Are you asking the first time he  
21 saw her or the first time she came to the office?

22 MR. WEINSTEIN: I wanted to know what  
23 history was taken of her.

24 A The first time she was in our office,  
25 actually the first question asked was her age and the

1 She denied any allergies. She denied any bleeding  
2 problems and stated that she was a nonsmoker.

3 She said that her hearing was good, she had  
4 no dizziness. She had no other pain or nasal  
5 discharge other than what was described. She denied  
6 nasal obstruction, which is difficulty breathing  
7 through the nose.

8 She denied any nasal trauma to her nose. She  
9 stated that she had approximately two to three colds  
10 per year, with frequent sore throats. She had  
11 difficulty swallowing only when she had her sore  
12 throats.

13 And then we asked about childhood diseases,  
14 such as measles and mumps and rheumatic fever, all of  
15 which she denied having. She denied having a history  
16 of pneumonia or asthma or hayfever.

17 We asked about past operations. She stated  
18 that she had her adenoids and tonsils out as a child  
19 and that she had had two C sections and an  
20 appendectomy.

21 She stated that -- we usually ask about the  
22 patient's general health to see if there is anything  
23 else that we might have missed. She said that that  
24 was fine and then we asked about the family.

25 Her father was living and well and her mother

1 second question asked was her occupation. She let us  
2 know that she was a stewardess.

3 The next thing we asked for was her chief  
4 complaint, which is why she is presenting to our  
5 office that day.

6 Do you want me to go through?

7 Q Yes, I would like you to give me the history  
8 of what her complaints were with how old she was at  
9 that time.

10 A She was a 43-year-old stewardess at that  
11 time, complaining of sinus infections, post-nasal  
12 drip, hoarseness of her voice.

13 She stated that she had seen a Dr. Maday in  
14 Woodland Hills and had received antibiotic injections  
15 three times, once a day, and also an oral antibiotic  
16 called Lincomycin for four days.

17 She complained of pressure and tinnitus,  
18 which is ringing, in both of her ears, greenish  
19 expectorant or mucus from her sinuses, pressure in  
20 both of her cheek areas, in her forehead and behind  
21 her ears with terrible headaches. She also complained  
22 of a sore throat that had been present for  
23 approximately 11 days and possible swollen neck  
24 glands.

25 She denied being on any other medications.

1 was also living and well. Her grandmother had a  
2 history of cancer. There is no diabetes history in  
3 the family. Her grandfather had high blood pressure  
4 and there was no history of heart disease or allergies  
5 in the family.

6 When I saw her the very first time on August  
7 9, 1989, at that time she complained of a sinus  
8 infection with cough, stating that her ears felt  
9 plugged and she had headaches.

10 She stated that her symptoms had continued  
11 since June of 1989, which was approximately two to  
12 three months. She complained of frontal headaches  
13 with throbbing pain. She stated that she had green  
14 phlegm with post-nasal drip and that she reiterated  
15 that she had a history of multiple bouts of sinusitis.

16 Q Did you perform a physical examination?

17 A Yes, I did.

18 Q And what did that reveal?

19 A The physical examination of the head and neck  
20 entails palpating the neck for any masses or lymph  
21 node swelling.

22 Q Palpating means?

23 A Palpating means touching.

24 It then entails taking a look into the oral  
25 cavity, the mouth, looking at the tongue and the

1 throat and other structures of the tongue, followed by  
2 looking into the nose with a little light and a nasal  
3 speculum, which is an instrument that just fits into  
4 the nostril and my hand and as my hand presses on the  
5 speculum, it opens the nostril so that I can look  
6 inside there.

7 I complete the examination then by checking  
8 the ears also with a little instrument called an  
9 otoscope.

10 Q Doctor, did there come a time when you formed  
11 a diagnosis based on your examination at least at that  
12 time?

13 A Yes. After having examined Mrs. French and  
14 noting that she had some tenderness over her sinuses  
15 when I pressed on the skin, as well as swollen  
16 bilateral inferior turbinates and given her history  
17 along with the physical examination, I made a  
18 diagnosis of chronic sinusitis, noting that there was  
19 an allergic component and I wanted to rule out or make  
20 sure that there weren't other anatomic causes for the  
21 chronic sinusitis.

22 Q Is your diagnosis based on a reasonable  
23 degree or probability?

24 A Yes.

25 Q Doctor, did you set out a course, did you

1 chronic sinusitis.

2 Explain the difference between each, since  
3 you have diagnosed Lynn, Lynn French, as having  
4 chronic sinusitis.

5 A Well, if somebody comes in and has never had  
6 sinus problems or has not had any sinus problems in  
7 the past six months and comes in with sinusitis,  
8 that's termed acute sinusitis. It's a sinusitis that  
9 just happens.

10 We treat it with antibiotics usually and the  
11 antibiotics cure it, or sometimes it's cured on its  
12 own without antibiotics. But as long as the sinusitis  
13 goes away relatively quickly and doesn't linger on and  
14 doesn't recur, that's called acute sinusitis.

15 When sinus infections continually recur over  
16 time or last for a long time, over months, then we  
17 term that chronic sinusitis.

18 Q Doctor, when was the next time you saw Lynn  
19 French?

20 A The next time I saw Mrs. French was September  
21 5, 1989, at which time she complained of a sinus  
22 infection. I noted that she had been on penicillin  
23 and that she continued to have thick, yellow green  
24 discharge.

25 Q Were they the complaints she had at that

1 decide what to do to treat her in order to relieve the  
2 problems that she was having over some years?

3 A Yes. The standard of care at that time when  
4 patients presented with sinusitis, chronic sinusitis,  
5 was to treat the patient with a high dose of  
6 antibiotics for two or three weeks. So I gave her  
7 penicillin, 500 milligrams, four times a day for two  
8 weeks.

9 I also gave her a nasal decongestant to try  
10 to shrink some of the swollen nasal passages to help  
11 both liquid flow out of her sinuses and to allow air  
12 to get up into her sinuses.

13 Lastly, I injected a very small amount of a  
14 medication called Kenalog, which is a steroid, into  
15 the tip, the front tip of her anterior inferior  
16 turbinate. The Kenalog, that steroid, helps decrease  
17 swelling of swollen tissues.

18 Lastly, I made a note saying that if her  
19 symptoms recur, then a CT scan of her paranasal  
20 sinuses should be obtained and that she was a possible  
21 candidate for endoscopic sinus surgery, again, if her  
22 symptoms continued.

23 Q Doctor, you mentioned that your diagnosis was  
24 chronic sinusitis. Now, the jury has heard various  
25 expressions before, that is, acute sinusitis and

1 time?

2 A Yes.

3 Q What did you do for her on that occasion?

4 A Well, I examined her again and found that her  
5 nose was congested, her sinuses, again, when I touched  
6 them, were now plus 2 tender. This is on a scale of  
7 zero to 4. If there is no tenderness, it's zero. If  
8 there is a little bit of tenderness it's 1, maximum  
9 pain and tenderness is 4. So this was a 2. So she  
10 had moderate pain over her sinuses.

11 Her ears were normal.

12 Again, I assessed her to have chronic  
13 sinusitis and I recommended that she have a CT scan of  
14 her sinuses and I also gave her a cough syrup, so she  
15 must have been complaining of a cough, which is  
16 frequent with sinusitis.

17 Q What is a CT scan?

18 A A CT scan, C stands for computed and T stands  
19 for tomography. It's a specialized x-ray that  
20 actually allows us to see slices of anatomy.

21 Q You were saying, Doctor, about the CT scan?

22 A Yes. It allows us to see slices of anatomy,  
23 almost as if you guillotined a cadaver and you  
24 actually can see the slice of the anatomy internally.

25 Q When is the next time that you saw her?

1 Let me come along a bit here. How soon  
2 thereafter was a CT scan performed?

3 A It was scheduled for the following day  
4 actually, September 6.

5 Q So you did schedule a CT scan to further  
6 investigate Lynn French's problems, correct?

7 A Yes.

8 Q Was a CT scan taken?

9 A Yes, it was.

10 Q What was that date?

11 A Let me look for the actual report. The CT  
12 scan was taken on September 6, 1989.

13 Q As I understand it, those records are not  
14 available of that CT scan, but we do have another CT  
15 scan that was taken later; is that correct?

16 A That is correct. We do have the written  
17 report from the x-ray doctor, the radiologist.

18 Q Although we don't have the actual picture of  
19 the CT scan because it either got lost or whatever,  
20 there is a report that was made contemporaneously when  
21 a radiologist read it; is that correct?

22 A Yes.

23 Q What did that CT scan show?

24 A To read from the report, it says that "There  
25 are large air fluid levels seen in the maxillary

1 A I believe I discussed the findings with Mrs.  
2 French and it was decided -- I believe that she had  
3 felt that she had had enough with the sinus infections  
4 and wanted to alter the course and frequency of having  
5 so many infections and I recommended, based on her  
6 history, her physical examination and her x-ray  
7 findings, that functional endoscopic sinus surgery  
8 would likely help her.

9 Q At that time, your office practice had to do  
10 with treating patients for sinusitis and surgery of  
11 same?

12 A Yes. As a practicing otolaryngologist, the  
13 majority of my patients seen were either for sinus,  
14 throat or nose problems.

15 Q I don't know if we have asked you this  
16 question before, but could you give the jury a general  
17 estimate of the number of patients over the years that  
18 you have seen, diagnosed and treated for upper  
19 respiratory sinus problems and problems in that area?

20 A I have been in practice for 17 years. At the  
21 point that I had seen Mrs. French, I had been in  
22 practice for four years. I work Monday through Friday  
23 and see approximately 20 to 25 patients a day and  
24 approximately five to ten of those patients each day  
25 were sinusitis patients.

1 antra," antra being the cavity, the cheek sinus that  
2 we looked at on the diagram. "Small air fluid levels  
3 are seen in the ethmoid sinuses."

4 For the benefit of the jury, air fluid level  
5 just means that a sinus that normally just has air in  
6 it now has something else in it, fluid or discharge.  
7 "No air fluid levels are identified in the frontal  
8 sinuses or the sphenoid sinuses," the frontal sinuses  
9 being the ones above our eyebrows, the sphenoid  
10 sinuses being the ones all the way at the back of the  
11 nose, the back of the throat.

12 Q I put this back up here so the jury could  
13 refer to it as you are speaking.

14 A "No definite retention cysts are seen. No  
15 thinning or ballooning sequestra or bone destruction  
16 is seen.

17 "The impression: Findings consistent with  
18 sinusitis."

19 Q So the radiologist also found sinusitis based  
20 on the CT scan; is that correct?

21 A Yes, based on the x-ray findings.

22 Q Did you receive this report in the usual  
23 course of your office practice?

24 A Yes.

25 Q As a result of that, what did you do?

1 So that could be anywhere from 20 to 40 a  
2 week for many years.

3 Q Therefore, based on that, you considered  
4 yourself a person very closely associated with the  
5 diagnosis and treatment of sinusitis and it's causes;  
6 is that correct?

7 A Yes. Additionally, coming out of my  
8 residency program, the chairman of our department was  
9 a Dr. Dale Rice, who was one of the -- he was at the  
10 forefront of the development of endoscopic sinus  
11 surgery. He has written textbooks on it. So in the  
12 course of our residency program, we spent a lot of  
13 time both diagnosing and treating sinusitis patients  
14 with Dr. Rice.

15 Q If you know, approximately how many ENT, how  
16 many ear, nose and throat doctors are there in the  
17 United States?

18 A I believe there are approximately 7- to 9,000  
19 otolaryngologists in the United States.

20 Q The United States itself, in terms of their  
21 doctors, is it at the forefront throughout the world;  
22 they have doctors who are specialists and write and  
23 are considered in the forefront of treating these type  
24 of diseases?

25 A Yes.

- 1 Q Doctor, what did you do, what was the final  
2 result of your conversation and meeting with Lynn  
3 French in terms of surgery?  
4 A Well, surgery was scheduled for September 20,  
5 1989 and performed on that day.  
6 Q Tell the jury what that surgery consisted of  
7 and where it was done and just bring us on down as to  
8 what's involved with where and how the surgery was  
9 performed.  
10 A The surgery was done at Tarzana Medical  
11 Center. I believe Mrs. French arrived at the hospital  
12 the morning of the surgery. She was taken to the  
13 operating room. She underwent general anesthesia.  
14 Once she was asleep, we further anesthetized  
15 the nose with lidocaine and epinephrin. The  
16 epinephrin cuts down on bleeding.  
17 Once that's all done and her face is washed  
18 and towed off, approximately ten to 15 minutes have  
19 passed and at that point we begin the surgery by first  
20 looking, again with a nasal speculum and a headlight,  
21 into her nose.  
22 Q Doctor, you mentioned she underwent general  
23 surgery and you put her to sleep; is that right?  
24 A Yes.  
25 Q So she is not awake during this time

- 1 obviously?  
2 A Correct. An anesthesiologist has started an  
3 IV in her hand, given her medication through the IV  
4 that let her go to sleep and when she is asleep, an  
5 endotracheal tube, a breathing tube is placed through  
6 her vocal -- through her mouth, down through her vocal  
7 cords to allow her to breathe on a ventilator.  
8 Q Are there known risks to general surgery --  
9 excuse me, to general anesthesia and did you advise  
10 Lynn French of it?  
11 A Yes. Certainly there are risks to general  
12 anesthesia. As part of the preoperative informed  
13 consent, all patients are told about the risks of  
14 anesthesia and of the operation.  
15 Q What is the ultimate risk that she is advised  
16 of?  
17 A Well, what I tell patients is that there is a  
18 risk to receiving the anesthesia. People can have  
19 reactions to the drugs. Certainly there is a very,  
20 very rare chance of reaction to the drug.  
21 The ultimate risk is the patient not waking  
22 up. The way I -- the way that I present this to the  
23 patient is to say that there is risks in everything we  
24 do. We certainly get in our cars, drive on the  
25 freeway. There is a risk that we can get a flat tire,

- 1 we can run out of gas, certainly we can end up in an  
2 accident and die. I don't expect any of those things  
3 to happen, yet the risk is there and it's real.  
4 Q After you advised her that there was a risk  
5 to general anesthesia, her decision was still to go  
6 ahead with the surgery, correct?  
7 A Yes.  
8 Q Now you can continue.  
9 A Once the inside of the nose is looked at by  
10 eyeballing it, we then use endoscopes, which are small  
11 rigid telescopes. They have a light source so that  
12 when I place the endoscope into the patient's nose  
13 cavity, it lights up the inside and we can actually  
14 see very well the anatomy.  
15 Each side of the nose is then treated  
16 depending upon what the pathology in that nose is, and  
17 our goal of the surgery is to open up that small  
18 passageway that we looked at on the diagram before so  
19 that it goes from the size of a ballpoint pen head to  
20 perhaps the size of our thumbnail, a half-inch by a  
21 half-inch, maybe even sometimes bigger.  
22 In doing that, we expose the cavities of the  
23 sinuses and take out any other disease that might be  
24 there, any fluid, mucus, polyps. Sometimes we are  
25 surprised, there could be other things there as well,

- 1 tumors, fungus.  
2 Once that's accomplished, the surgery is  
3 continued back into the ethmoid sinuses, which are the  
4 sinuses that are between the eyes and the nose, and  
5 those little cells are opened up as much as possible  
6 to allow them, one, to drain into the nose, and again  
7 to allow air to be in contact with the lining.  
8 Once we get to a point where it appears that  
9 the lining in those cells are normal and there is no  
10 further disease, basically the operation is over at  
11 that point, unless there is something specifically  
12 that we see on the CAT scan that tells us to go to  
13 another area.  
14 Q How did Lynn French -- did she survive, so to  
15 speak, the surgery and what was the outcome of the  
16 surgery?  
17 A Well, when the surgery was through, we  
18 usually placed a little packing in the area that's  
19 been operated on. It's about a 1 by 2 inch little  
20 sponge with a string attached. That goes into the  
21 area where the sinus has been opened.  
22 She was then reversed from the general  
23 anesthesia. She tolerated the procedure very well and  
24 I believe she had a pretty stable and normal  
25 post-operative course.

1 Q Could you tell the jury how she proceeded  
2 from there, her chronic sinusitis?

3 A Well, I saw her post-operatively in the first  
4 two weeks of October and things were going relatively  
5 well.

6 Do you want me to go through each occurrence  
7 of seeing her in the office or to give you a general  
8 idea?

9 Q You saw her a lot of times, didn't you,  
10 Doctor?

11 A Yes.

12 Q Maybe you can move along in a summary fashion  
13 explaining, without going through -- tell the jury  
14 physically your notes and reflecting the times you saw  
15 her, just sort of flick through it.

16 A It is probably about ten pages or more of  
17 notes of her being in the office, and also there were  
18 frequent telephone calls as well. After a while, Mrs.  
19 French became very good at almost diagnosing her  
20 symptoms herself, and certainly from seeing her  
21 multiple times, if she called and said she had green  
22 discharge and headaches and felt that she had  
23 sinusitis, I would occasionally prescribe medications  
24 over the telephone.

25 I think in general, the incidence of her

1 chronic sinusitis is per

2 A Well, to this poi  
3 can't predict the future.

4 Q Based on reason  
5 you have an opinion a  
6 will continue from tim  
7 chronic sinusitis sym

8 A It looks that w.

9 Q Would you say it's more likely than not?

10 MR. REILLY: Objection, your Honor. It's not  
11 the standard.

12 THE COURT: It's not the standard?

13 MR. REILLY: He already asked him the  
14 question, which is the standard, reasonable  
15 medical probability, which is fine, he answered  
16 the question. I have no objection to that.

17 THE COURT: I think it's the same standard  
18 that we are talking about. You can include  
19 reasonable and medical probability.

20 Q Within reasonable medical probability,  
21 Doctor, would you have an opinion as to whether, more  
22 likely than not, Lynn French will continue to have  
23 sinus problems hereinafter during her life?

24 A Yes.

25 Q And that opinion is she will more than likely

1 infections decreased after the surgery than from  
2 before the surgery. There were periods where we  
3 didn't see her for a year or six months.

4 Q Would you tell the jury actually  
5 approximately or pretty close to the number of times  
6 that -- aside from the phone calls that you received,  
7 the number of times that you actually saw Lynn French,  
8 that is, that she was in your office seeking help for  
9 her chronic sinusitis?

10 A Up until the present time, approximately 15  
11 times.

12 Q For the benefit of the jury, would you  
13 summarize, in a general way, those visits, what you  
14 saw her for rather than all the notes that you made  
15 throughout those 15 times?

16 A Again, in general, she usually complained  
17 with pressure and headaches and discharge from her  
18 nose and just generally felt awful and was treated  
19 with antibiotics.

20 Q Doctor, is that usual and customary for  
21 persons who have chronic sinusitis as compared to  
22 acute sinusitis?

23 A By definition, I would classify Mrs. French  
24 as a chronic sinusitis patient.

25 Q Does that mean that her condition of having

1 have problems for the rest of her life?

2 A Yes.

3 Q Doctor, during the course of your treatment,  
4 was a CAT scan taken?

5 A Yes.

6 Q When was that CAT scan taken?

7 A Approximately in August of 1995.

8 Q Have --

9 A May I add, it was August 31, 1995.

10 THE COURT: What is it you are looking for?

11 MR. WEINSTEIN: The actual film.

12 THE COURT: Do you have that?

13 THE WITNESS: I believe I placed it back in  
14 the radiograph file. It was a manila file.

15 Q Doctor, I will show you this exhibit, which I  
16 guess I have to identify it, Defendant's Exhibit --

17 THE COURT: Has it been marked?

18 THE CLERK: Yes.

19 THE COURT: Has it been marked in evidence or  
20 just for ID?

21 THE CLERK: It is Defendant's Exhibit 2021  
22 Composite for Philip Morris and Lorillard  
23 Tobacco.

24 THE COURT: Is it a defendant's exhibit?

25 THE CLERK: Yes, it is.

1 MR. REILLY: Yes, it is, your Honor.  
 2 Q Doctor, I am going to place these CAT scans  
 3 on this box and I will show you a blowup of these  
 4 shortly. Maybe if you can explain how they are done  
 5 and what it looks like.  
 6 A Again, what they have done here is --  
 7 THE COURT: Can the jury see this?  
 8 There is a blowup you will be able to  
 9 see later, but does the shadow box move out from  
 10 the wall at all?  
 11 THE WITNESS: No.  
 12 A The first picture shows dotted lines through  
 13 the side of a skull and basically what they have done  
 14 here is taken slices, multiple slices going from the  
 15 front to the back through the head. The way I explain  
 16 this is it's like taking a loaf of bread and slicing  
 17 it from the front to the back and then taking that  
 18 front piece and flipping it around so we can see it  
 19 and then we take the second piece, flip it around so  
 20 we can see it.  
 21 So the very front piece here, you can see  
 22 Mrs. French's front teeth and the little nasal bones  
 23 and just the beginning of her forehead.  
 24 On CT scans, air shows up as black and bone  
 25 shows up as white, as well as other solid structures,

1 almost no gray. There is one small area of gray here  
 2 on the left.  
 3 Again, we look at the turbinates, which are  
 4 those structures that we looked at that come off the  
 5 side wall of the nose. There are thin pieces of bone.  
 6 You can see a little bit of white surrounded by  
 7 swollen gray tissue.  
 8 The middle turbinate here significantly is  
 9 not just a thin piece of bone surrounded by lining,  
 10 but it has a little shell that's now ballooned out and  
 11 there is air within the middle turbinate and that  
 12 structure, when the middle turbinate has air in it, is  
 13 called a concha bullosa, like a conch shell, and  
 14 bullosa is like a ball. So that was noted on her CAT  
 15 scan.  
 16 As we again go further from front to back, we  
 17 now see the area where her cheek sinus was opened to  
 18 allow more air to get in and allow fluid to come out.  
 19 On this side you could see there is a little  
 20 bony area. On this side it's empty or not there.  
 21 On different cuts, on different areas of the  
 22 CT scan it's also open on her right side.  
 23 Again, looking at her cheek sinuses, there is  
 24 very little fluid in the sinuses. When we described  
 25 an air fluid level earlier in the sinus, you would see

1 such as teeth. Soft tissues, like cheeks or fluid,  
 2 show up gray.  
 3 So as we go from front to back, you see  
 4 various areas of black air in the sinuses, black on  
 5 the x-rays, not really black air. You see gray areas  
 6 where, say, the eyeballs are, the inferior turbinates  
 7 are down here, the nasal septum, which is the center  
 8 divider between our nose is the structure that runs  
 9 right down the center in these pictures and then the  
 10 brain is above here.  
 11 Q What do they reveal, if anything, that's  
 12 significant for the jurors to appreciate?  
 13 A Well, again, when I look -- this CAT scan  
 14 from 1995 was after Mrs. French's surgery, so what I  
 15 look -- the reason I got this was to see whether or  
 16 not there was something blocking her outflow tract  
 17 from her sinuses or whether there was disease in those  
 18 sinuses that was causing, again, recurrent infections.  
 19 So the first area I look at is in the frontal  
 20 sinuses, the sinuses above the forehead, and there is  
 21 lots of black areas, lots of air with very little or  
 22 no gray. So I know that her frontal sinuses are fine.  
 23 As we go again from front to back, we see the  
 24 ethmoid sinuses that are between the eyes and the  
 25 nose, and again there is lots of black areas with

1 maybe up to this level gray and above it air or black.  
 2 Q Doctor, we have blown up some CT scans that  
 3 are there.  
 4 A Okay.  
 5 Q Would you tell me which ones would  
 6 illustrate, if any, what you are pointing out so we  
 7 have larger ones?  
 8 A The one in your right hand is probably  
 9 sufficient.  
 10 Q Maybe it's larger, so if you can come down  
 11 here. There are actually three multiple -- there are  
 12 many sections that are revealed on the actual film, is  
 13 that right, doctor?  
 14 A Yes. This captures one section and on this  
 15 section we don't see -- this is either in front of or  
 16 behind the area where this bone was removed. So she  
 17 has a hole from this sinus into her nose either in  
 18 front of this or behind this, but right here you can  
 19 see there is bone completing the nasal wall of that  
 20 sinus.  
 21 Again, the sinus pushes things up into this  
 22 natural opening where the small hole was, up into  
 23 here, and it drains into the nose.  
 24 What we see here is some gray thickening  
 25 mucus or lining in the floor of her left maxillary or

1 cheek sinus and this could represent chronically  
2 inflamed tissue or mucus. You can't tell really the  
3 difference, although if it was truly secretions and  
4 mucus, we would probably have a straight air fluid  
5 level there.

6 The middle turbinate in this picture is right  
7 here, and again at this level of the cut, we don't see  
8 the air cell within it that creates what we term the  
9 concha bullosa.

10 There is a small amount of thickening in the  
11 bottom of her right cheek sinus as well.

12 Significantly, the sinuses, the ethmoid  
13 sinuses are very close to the eyeballs and the brain,  
14 and there is very thin bone that separates those two.

15 So again, as part of the informed consent  
16 prior to surgery, it's important for the surgeon or  
17 myself to inform the patient that there is risk to  
18 their vision as well as they could have leakage of  
19 fluid from the brain as a complication of the surgery.

20 Q After you reviewed the CT scans, what course  
21 of treatment did you continue, if any, when Lynn  
22 French came to seek your help?

23 A Well, I noted on the chart that there was  
24 thickening of the lining of the left inferior  
25 maxillary sinus. We decided at that point to continue

1 her to come back for the steroid shot and she came in  
2 and had that.

3 After that, I didn't see her again -- so I  
4 saw her November 3, 1995, I gave her a steroid shot  
5 and treated her with some antibiotics and then did not  
6 see her again until July of 1997. So that was  
7 approximately a year and a half.

8 Q What history did you take then when you saw  
9 her about any problems that she was having?

10 A On July 11, 1997, she complained again of  
11 pressure, pain over her left cheek, her left eye and  
12 her ears again were plugged.

13 On physical examination, she had slight  
14 crusting or dried mucus in the left nostril. I  
15 diagnosed her with sinusitis and again treated her  
16 with an antibiotic and decongestant.

17 Q Did she give you, to the best of your  
18 recollection, a history of having off and on problems  
19 throughout?

20 A Yes.

21 Q And then the next time you saw her, Doctor?

22 A Well, again, then there was a grouping of  
23 telephone calls between August '97 and September '97  
24 where three courses of antibiotics were given.

25 Another antibiotic was given in March of '98, again in

1 treating her with antibiotics as well as nasal steroid  
2 sprays, which help to decrease the swelling of the  
3 tissues.

4 Q When was the next time that you saw Lynn  
5 French after that?

6 A October 7 of -- I'm sorry, one second.  
7 Strike that. I saw her September 6, 1995, and at that  
8 time she stated that she was improved, there was  
9 decreased discharge in her nose, but she still  
10 complained that her ears were clogged.

11 At that time her left cheek sinus opening and  
12 her right cheek sinus opening, which are called the  
13 ostiomeatal unit areas were both found to be open on  
14 examination and there was no discharge noted from  
15 those areas.

16 Q And the next time? I realize there may have  
17 been -- there were probably telephone calls and such,  
18 Doctor?

19 A Yes. There were telephone calls in  
20 September, a week later in September for an  
21 antibiotic, in October for an antibiotic, a week later  
22 in November, at which time she was told to come back  
23 to the office for a steroid shot; two weeks later  
24 another antibiotic was given and -- so that was  
25 mid-November -- I'm sorry. In November of '95 I told

1 April of '98 and November of '98, then again January  
2 of '99, all of these being over the telephone.

3 In April of '99, again she had an antibiotic  
4 prescribed and then it was not until September of '99  
5 that she had her next antibiotics prescribed.

6 I saw her again October 7, 1999, again  
7 presenting with left-sided sinus pressure and  
8 headaches. At that time her sinuses on the left side  
9 were plus 2 tender, her nose appeared clear. I  
10 assessed her to have chronic sinusitis and treated her  
11 with another antibiotic.

12 Q Doctor, chronic sinusitis is a serious  
13 illness, isn't it, Doctor?

14 A Well, it certainly is for the people that  
15 suffer from it.

16 Q Doctor, would you continue now on the course  
17 of her treatment?

18 A Yes. Once again, there were telephone  
19 antibiotics prescribed October of '99, November of  
20 '99, December of '99, January of 2000, May of 2000,  
21 August of 2000, September of 2000 and October of 2000.

22 Then in 2001, in March and April she was  
23 given antibiotics and again given antibiotics in  
24 October of 2001.

25 The last time she received antibiotics in



1 2001 was in December and that's been up until March of  
2 2002. That was the last time that she received  
3 antibiotics.

4 Q Did you see her at that time or was it on the  
5 phone?

6 A All of these occurrences were on the phone.

7 The last time I saw her in the office for an infection  
8 was it appears October of '99.

9 Q Did Lynn French see anybody else, at least as  
10 far as your records are concerned, anybody else in the  
11 office?

12 A No.

13 Q Doctor, during this period, obviously up  
14 until March of this year, she was obviously still  
15 receiving medication for her problems; is that  
16 correct?

17 A Correct.

18 Q Doctor, throughout these years, was Lynn  
19 French cooperative with you?

20 A Yes.

21 Q Did she appear to have a genuine desire to  
22 get better?

23 A Yes.

24 Q Did she ever deviate and not follow your  
25 instructions?

1 your records about the cause, so I am just wondering,  
2 did you ever make a determination up until the time  
3 that you were asked about connecting tobacco smoke,  
4 second-hand smoke?

5 A Certainly early, from the earliest times of  
6 her visits, we always discussed her occupation as a  
7 stewardess and the fact that she was exposed to  
8 airline cabins with pressure, pressurization problems,  
9 as well as exposure to lots of people in a closed  
10 quarters situation, as well as exposure to cigarette  
11 smoke.

12 Q Doctor, originally you talked about the  
13 effect of tobacco smoke on the cilia?

14 A Correct.

15 Q I really want to ask you about whether or not  
16 you have an opinion, based upon reasonable medical  
17 probability, as to whether or not you have an opinion  
18 as to whether or not the cilia in Ms. French's body  
19 was affected and permanently affected which gave rise  
20 to the chronic sinusitis?

21 A Well, I do believe that her cilia of her  
22 upper respiratory tract were affected by the  
23 environmental tobacco smoke that she was exposed to in  
24 airline cabins. Whether or not it is a permanent  
25 effect, most likely it is not, but I think that she

1 A Not that I know of.

2 Q Tell the jury the type of person that she was  
3 in terms of when you saw her in expressing her desire  
4 to get better.

5 A Well, like all patients, she wanted to not  
6 suffer from recurrent infections, she wanted to feel  
7 better. It was affecting her life both at home and at  
8 work, and certainly she didn't want to be on  
9 antibiotics all the time.

10 Q Otherwise, other than that, did she try to be  
11 cordial and pleasant to you?

12 A Yes. She has always been a very pleasant  
13 patient. The staff has always liked her very much.

14 Q Doctor, in terms of your goal, your  
15 objective, was your primary objective to treat her?

16 A Well --

17 Q Cure her, obviously, possibly?

18 A Yes.

19 Q The reason why I asked that question, because  
20 really, were you that interested, so to speak, in that  
21 time of specifically determining what would be the  
22 more likely cause of the chronic sinusitis sustained  
23 by Ms. French?

24 A I'm sorry, I don't understand the question.

25 Q Well, I didn't see -- there is nothing in

1 would need a biopsy of those cilia to find out what's  
2 going on currently.

3 Q Doctor, I would like you to ask you various  
4 questions and I would like you -- I am going to ask  
5 you a hypothetical question concerning facts that the  
6 jury will hear from her and have heard some of it from  
7 other flight attendants. I am going to ask you a  
8 question at the end.

9 Doctor, I want you to assume the following  
10 facts, that is facts that the jury will hear either by  
11 testimony or by either the plaintiff or by other  
12 witnesses.

13 I want you to assume that Lynn French is a  
14 nonsmoker; that she has never smoked a cigarette in  
15 her entire life: that she has always chosen, when she  
16 has been given a choice, such as in a restaurant, to  
17 sit in a nonsmoking section.

18 I want you to assume that in 1976, some 26 or  
19 27 years ago, she went to work as a flight attendant  
20 for TWA Airlines. I want you to also assume that this  
21 has been her only career in her life.

22 I want you to assume that she was a healthy,  
23 athletic individual prior to being exposed to  
24 cigarette smoke in a contained environment of an  
25 airline cabin.

1 I want you to assume that a couple of years  
2 after being continually exposed to the environment of  
3 cigarette smoke in the contained environment of the  
4 airplane, Lynn French began to suffer from respiratory  
5 problems, especially in her sinuses; that throughout  
6 her career Lynn French worked mostly in the coach  
7 section of the airplane, which had a number of seats,  
8 well over 100, at times designated for smokers, such  
9 as the 727, 747 and the L-1011.

10 I want you to assume that the passengers were  
11 spewing out smoke in her face when smoking was allowed  
12 on airplanes; that flight attendants, including Lynn  
13 French, suffered headaches, stuffed noses, aching  
14 lungs, burning eyes and coughing after every flight  
15 where there was smoking, indicating the degree of  
16 smoke that they were subjected to, and that the  
17 smoking was permitted on all domestic airlines until  
18 1988, when it was banned on only flights of two hours  
19 or less, and in 1990, when it was banned on all  
20 domestic flights, and that until 1996 you could still  
21 smoke on TWA's international flights.

22 I want you to assume that regardless of the  
23 ventilation systems on the aircraft, the smoke would  
24 never completely clear up or out of the cabin  
25 throughout the entire flight, even if the captain

1 turned off the no smoking sign -- turned on the no  
2 smoking sign, which occurred at times because of the  
3 degree and duration of smoke that was in the  
4 compartment.

5 I want you to assume that the smoke permeated  
6 the air throughout the entire cabin of the airplane  
7 and was more concentrated in the coach part of the  
8 cabin where Lynn French usually worked; that usually  
9 you could actually see the smoke and the smoke would  
10 become infused in the seats, blankets, pillows and  
11 would leave stains on -- in certain parts of the  
12 aircraft and the interior walls; that the smell would  
13 penetrate the clothes and hair of the flight  
14 attendants and passengers and would even permeate the  
15 interior and contents of closed suitcases.

16 I want you to further assume that the  
17 passengers would complain about the intensity of smoke  
18 and irritation, respiratory problems it caused.

19 I want you to further assume that there has  
20 been testimony or will be testimony from Julius  
21 Richmond, the former Surgeon General, concerning the  
22 fact that breathing second-hand smoke in airline  
23 cabins causes respiratory diseases in nonsmoking  
24 flight attendants.

25 I want you to also assume that the jury has

1 already heard from David Burns, who served as the  
2 editor of the 1986 Surgeon General's report --

3 MR. REILLY: Objection, your Honor.

4 THE COURT: That part?

5 MR. REILLY: Yes.

6 THE COURT: Overruled.

7 Q That David Burns, who has served as editor of  
8 the 1986 U.S. Surgeon General's report, testified in a  
9 case that, this trial, by video deposition, that  
10 exposure to second-hand tobacco smoke in airline  
11 cabins causes respiratory and pulmonary diseases,  
12 disorders, including sinus diseases.

13 I want you to further assume that Lynn French  
14 flew an average of 70 to 90 hours or approximate 80  
15 hours overall per month for approximately 26 years,  
16 with the exception of a few months to be at home with  
17 her children on two occasions and a few weeks off for  
18 a hysterectomy and days off for illness.

19 Also I wanted you to assume that Lynn French  
20 has been exposed to cigarette smoke on airlines for  
21 thousands and thousands of hours, somewhere between an  
22 estimated 10- to 15,000 total hours; that in 1976, for  
23 a time she flew two international flights per week  
24 from New York to Frankfurt, Madrid, Rome, Athens,  
25 Paris, Cairo, London, and that these flights were

1 usually on 747's or L-1011's and were from eight to  
2 ten hours of duration on the average, and to assume  
3 that dozens and dozens of people would be smoking  
4 simultaneously on any given flight.

5 I wanted you to further assume that from 1976  
6 to 1984, Lynn French's domestic flights were usually  
7 transcontinental, that is, from New York to LA, New  
8 York to San Francisco, nonstop; that in 1984, Lynn  
9 French had about 16 trips from LA to London, each  
10 flight approximately 10 to 12 hours; that from 1986 to  
11 1988, Lynn French flew a mix of domestic and  
12 international flights, the international flights  
13 usually to London and Paris from Los Angeles, a  
14 minimum of ten hours on the plane each way.

15 I want you to assume that the smoking was  
16 permitted on international flights for the entire  
17 flight from ten to 15 minutes before takeoff, ten to  
18 15 minutes before landing, and that while working as a  
19 flight attendant, walking briskly throughout the cabin  
20 serving passengers, Lynn French's respiration rate was  
21 higher than that of the sedentary passengers, and that  
22 as a result, she was inhaling more smoke, that is more  
23 frequently.

24 I want you to assume that there has been no  
25 seasonal component to Lynn French's symptoms and that

1 she has had no prior history of any allergies before  
 2 becoming an airline employee.  
 3 Doctor, with these assumptions I have asked  
 4 you to assume, in your opinion, based on reasonable  
 5 medical probability, based on your background in being  
 6 a specialist in the area that you have designated and  
 7 testified to, was the exposure to cigarette smoke,  
 8 second-hand smoke on board the aircraft more likely  
 9 than not the substantial cause or substantial  
 10 contributing cause or factor of Ms. French's chronic  
 11 sinusitis which you have diagnosed?  
 12 MR. REILLY: I object to the form, your  
 13 Honor.  
 14 THE COURT: Could you just approach the  
 15 bench for just a minute?  
 16 (At the side bar.)  
 17 THE COURT: What part do you object to?  
 18 MR. REILLY: Well, actually, your Honor,  
 19 there are several parts I object to. The part I  
 20 objected to when I made my first objection was --  
 21 THE COURT: That's Burns?  
 22 MR. REILLY: Yes. It's not permissible to  
 23 ask this witness to rely on testimony of another  
 24 witness.  
 25 THE COURT: He wasn't asking him to rely on

1 What else about the form of this question?  
 2 MR. REILLY: Those are my two principal  
 3 objections to the form of this question, your  
 4 Honor.  
 5 THE COURT: I am going to overrule them.  
 6 (Jury present.)  
 7 THE COURT: Do you remember all of that so  
 8 you can answer?  
 9 THE WITNESS: Can I have him repeat the  
 10 question, please?  
 11 Yes, I do.  
 12 THE COURT: Go ahead.  
 13 Q I am asking you to answer the question I  
 14 asked and I am not going to read it again.  
 15 A Yes, I do believe that her exposure to --  
 16 Q No, the first thing I asked you was do you  
 17 have an opinion?  
 18 A Yes.  
 19 Q What is that opinion?  
 20 A That her exposure to the environmental  
 21 tobacco smoke in airline cabins did contribute to her  
 22 chronic sinusitis.  
 23 Q Was it a substantially contributing cause of  
 24 her sinusitis?  
 25 A Likely the most --

1 it, he just said assume. It is all hypothetical,  
 2 assume this, that and the other thing.  
 3 MR. REILLY: Sure. He asked him to rely on  
 4 the testimony of Dr. Burns.  
 5 THE COURT: No, he asked him to assume it.  
 6 Assume it. Assume that there is testimony that  
 7 says such and such. That's what I understand.  
 8 MR. REILLY: What's the purpose of asking  
 9 him to assume it unless you are asking him to  
 10 rely on it? I mean, why is it in the  
 11 hypothetical? That's number one.  
 12 Number two is he once again violated the  
 13 admonition of your Honor, the ruling of your  
 14 Honor not to make reference to claims or injuries  
 15 by other flight attendants.  
 16 THE COURT: Only barely did he do that. He  
 17 did at some point, but that was not a big part of  
 18 it.  
 19 MR. REILLY: You can only be a little  
 20 pregnant I suppose.  
 21 THE COURT: That's not an objection to the  
 22 form of this hypothetical question, that's  
 23 another type of objection, and I agree, at one  
 24 point he said something about it, but it was  
 25 pretty minor.

1 MR. REILLY: Objection, your Honor.  
 2 THE COURT: Pardon me?  
 3 MR. REILLY: Objection. Repetitious. It is  
 4 asked and answered.  
 5 THE COURT: Overruled. You may answer.  
 6 A Likely the most contributing cause to her  
 7 chronic sinusitis.  
 8 Q More than likely?  
 9 A Yes.  
 10 Q Now, Doctor, you may recall, I talked about  
 11 the respiration rate. What is the normal respiration  
 12 rate of a person; in other words, how many times do  
 13 they breathe in and out per minute?  
 14 A A number between 12 and 20 times per minute.  
 15 Q The average person will breathe in and out  
 16 between 12 and 20 times every minute?  
 17 A Yes, depending upon when somebody is doing  
 18 yoga it is going to be on the low side and when  
 19 somebody is --  
 20 Q That's my point.  
 21 A -- exercising, it's going to be higher.  
 22 Q If somebody is sitting in an airline seat,  
 23 not doing anything but maybe reading, you know,  
 24 working your mind more, it would be somewhere between  
 25 12 and 20?

1 A Probably on the lower side of that.  
 2 Q How about somebody who is working, like Lynn  
 3 French and all the other airline candidates, would  
 4 expending energy such as pulling carts and going to  
 5 the galley, that is, where they have their food and  
 6 coffee and such, and walking through the smoke and  
 7 whatever, does the respiration rate of a person --  
 8 this is so simple and elementary I shouldn't be  
 9 asking, but does the respiration rate, that is, does a  
 10 person breathe in and out more times than a person who  
 11 is just sitting in sort of a sedentary position?  
 12 A Again, depending upon the degree of exercise  
 13 and work, your respiration rate goes up.  
 14 Q Does a person breathe deeper in order to  
 15 breathe in more -- well, breathe in more air,  
 16 hopefully good clean air and oxygen, when a person is  
 17 working?  
 18 A It depends on the individual and their state  
 19 of anxiety or relaxation.  
 20 Q Now, Doctor, in your opinion, based upon  
 21 reasonable medical probability, can her condition of  
 22 sinusitis lead to any other diseases within reasonable  
 23 medical probability?  
 24 MR. REILLY: Objection, your Honor.  
 25 THE COURT: I will tell you what, this would

1 was qualified to answer.  
 2 THE COURT: No, I want the witness to answer  
 3 the question on a proffer and then I will excuse  
 4 him and we will hear further objection.  
 5 MR. WEINSTEIN: I apologize. I probably  
 6 should have approached the bench and said based  
 7 on what your ruling was.  
 8 THE COURT: That's all right.  
 9 Do you understand the question?  
 10 Do you want it repeated?  
 11 THE WITNESS: Yes.  
 12 BY MR. WEINSTEIN:  
 13 Q Doctor, do you have an opinion, based on  
 14 reasonable medical probability, as to whether or not  
 15 Ms. French's chronic sinusitis can lead to any other  
 16 disease?  
 17 A Yes.  
 18 Q And what is that opinion?  
 19 A Well, it's well known that chronic sinusitis  
 20 or chronic infected materials dripping down from the  
 21 sinuses, such as a post-nasal drip into the lungs, can  
 22 trigger chronic bronchitis, asthmatic bronchitis.  
 23 Certainly, again, chronic changes and chronic  
 24 irritation to the lining of the sinuses can lead to  
 25 nasal polyps.

1 be a good time to break for lunch and I will hear  
 2 the objection. We are obviously not going to  
 3 finish with the witness before lunch.  
 4 It's 10 after 12. We will start at 1:45  
 5 because this might take us a little while, so  
 6 1:45 for the jurors. Please have a nice lunch.  
 7 We will collect your notepads. Don't discuss the  
 8 case and we will resume at 1:45.  
 9 (Jury not present.)  
 10 THE COURT: Everybody have a seat. Let me  
 11 just deal with this before we go to lunch. What  
 12 is your objection?  
 13 MR. REILLY: The objection is, your Honor,  
 14 there is a ruling by your Honor, I presume -- I  
 15 don't know what Mr. Weinstein is intending to do,  
 16 but my presumption was he was trying to lay a  
 17 foundation.  
 18 Perhaps the witness should be excused, your  
 19 Honor.  
 20 THE COURT: I should think perhaps the  
 21 witness should proffer his answer first.  
 22 MR. ENGRAM: I think the problem was he  
 23 failed to lay the foundation. He was asking the  
 24 ultimate question, does he have an opinion,  
 25 without laying any foundation that this witness

1 Q I would like to limit it, I think I have to  
 2 limit it to the sinus area, to the sinus area, can --  
 3 THE COURT: Wait. Were you finished with  
 4 your answer?  
 5 MR. WEINSTEIN: I'm sorry.  
 6 A I was going to say that a chronic  
 7 inflammation to any area of the body can lead to a  
 8 higher turnover of cells and the possibility of a  
 9 neoplastic cell or cancer cell developing.  
 10 Q Are you saying, Doctor, if we don't get into  
 11 too much detail, that her chronic sinusitis is a  
 12 condition, based on its original causation, based upon  
 13 the continual irritation she suffers from chronic  
 14 sinusitis, can lead to, within reasonable medical  
 15 probability, cancer of the sinuses?  
 16 A Well, any of us, again, without chronic  
 17 sinusitis can develop cancer in the sinuses. I think  
 18 in the rare occurrences of cancer of the sinuses, your  
 19 chances are probably slightly greater if you have a  
 20 chronic irritation there.  
 21 Q So you do have, there is an increased risk in  
 22 incurring cancer of the sinuses if you are suffering  
 23 from chronic sinusitis; is that correct?  
 24 A I --  
 25 Q -- than somebody who doesn't have chronic

1 sinusitis?

2 A I don't know if that's been documented  
3 scientifically. Again, it makes sense that if you  
4 have a chronic irritation somewhere, there is a  
5 possibility of a wayward cell forming.

6 Q Is that based on, is it your opinion -- I  
7 mean, we know that a lot of things haven't been  
8 documented, but based upon your opinion as a medical  
9 doctor, based upon your experience and training as a  
10 medical doctor and background generally and in your  
11 expertise?

12 A I have not seen that to be the case in my  
13 years of practice where patients with chronic  
14 sinusitis have developed cancer of the sinuses.

15 Q But do you have an opinion that that can  
16 occur as a result of the --

17 MR. REILLY: I object, your Honor. Now he is  
18 calling for speculation.

19 THE COURT: I agree. I think it's calling  
20 for speculation.

21 MR. WEINSTEIN: I think I need a ruling from  
22 the court.

23 THE COURT: To this?

24 MR. WEINSTEIN: For the record, not in front  
25 of the jury, I was going to have him talk

1 MR. REILLY: Yes, your Honor.

2 THE COURT: We probably won't get back to  
3 you until we resume with the jury until whatever  
4 time I said, which is 1:45. Thank you.

5 (Witness excused.)

6 THE COURT: What's the position of the  
7 defendants, what's the position of the plaintiff  
8 on this area?

9 MR. REILLY: Your Honor, obviously, or at  
10 least apparently Mr. Weinstein was attempting to  
11 get this witness to say that there was a  
12 scientific basis for asserting that patients who  
13 have sinusitis or people who have sinusitis are  
14 at increased risk for the development of cancer  
15 of the sinuses.

16 However, Mr. Weinstein asked him:

17 "Q. So you do have, there is an increased risk  
18 in incurring cancer of the sinus if you are  
19 suffering from chronic sinusitis; is that  
20 correct?"

21 He started to answer, he was interrupted by  
22 Mr. Weinstein. "-- than somebody who doesn't  
23 have chronic sinusitis?"

24 His answer was:

25 "A. I don't know if that's been documented

1 about --

2 THE COURT: Wait a minute. Let's see. I  
3 ruled on that last objection, sustaining the  
4 objection. So what's your next question?

5 MR. WEINSTEIN: I don't have any objection.  
6 I only want to make just a proffer.

7 THE COURT: What's your next question of  
8 the witness? No other questions, that's it?

9 MR. WEINSTEIN: Not now for outside the  
10 jury. In other words, I won't get into that  
11 subject anymore, but I think what I should do,  
12 Judge, you stopped me on the question, on another  
13 question.

14 I assume that the court is ordering me not  
15 to get into that.

16 THE COURT: I haven't done anything except  
17 rule on this last objection.

18 MR. WEINSTEIN: Please excuse me, Judge.

19 THE COURT: Have you finished with your  
20 proffer on this?

21 MR. WEINSTEIN: Yes, I have.

22 THE COURT: Did the defense counsel want to  
23 ask anything of the witness at this point?

24 MR. REILLY: It's not necessary, your Honor.

25 THE COURT: Should we excuse the witness?

1 scientifically. Again, it makes sense that if  
2 you have chronic irritation somewhere, there is a  
3 possibility of a wayward cell forming."

4 Mr. Weinstein said:

5 "Q. Is that based on, is it your opinion, I  
6 mean, we know that a lot of things haven't been  
7 documented, but based upon your opinion as a  
8 medical doctor, based upon your experience and  
9 training as a medical doctor and background  
10 generally and in your expertise?

11 "A. I have not seen that to be the case in  
12 my years of practice where patients with chronic  
13 sinusitis have developed cancer of the sinuses."

14 I didn't have to ask a question.

15 THE COURT: So based on that, what is it  
16 your asking?

17 MR. REILLY: I will move that no fear of  
18 cancer claim be made in this case, be permitted  
19 in this case, claim for damages be permitted in  
20 this case because there is no scientific basis  
21 for it, there is no reasonable basis --

22 THE COURT: Are you asking that this  
23 testimony --

24 MR. REILLY: I am asking that that line of  
25 inquiry not be permitted of this witness.

1 THE COURT: I would be inclined to agree  
2 with the defendant's position. So tell me what  
3 is your position?  
4 MR. WEINSTEIN: Judge, I think my obligation  
5 is to the court to really concede that based on  
6 that testimony, I think we all have to be candid  
7 with the court.  
8 You may recall, Judge, that I asked the  
9 question only the way I did because as I  
10 understood your prior instructions, it was that  
11 we would have to relate the sinusitis -- well,  
12 that we would have to get a definite answer from  
13 him from the question I asked.  
14 THE COURT: Right. You would have to show  
15 that there was a, within reasonable medical  
16 probability, a risk of developing cancer as a  
17 result of the chronic sinusitis.  
18 MR. WEINSTEIN: Well, if it was that, then I  
19 have no -- he will definitely say that she can  
20 develop lung cancer.  
21 The problem is, Judge --  
22 THE COURT: He didn't say anything about  
23 lung cancer.  
24 MR. WEINSTEIN: No, I know that. I tried to  
25 restrict him to the sinuses because that's what

1 caused by sinusitis.  
2 MR. WEINSTEIN: That's why I was candid.  
3 MR. REILLY: In his entire practice it has  
4 never occurred.  
5 Now he is going to come in and talk about  
6 development of lung cancer to an organ of the  
7 body he doesn't even deal with.  
8 THE COURT: I don't know if that's his  
9 opinion. Can we get him back in to see what his  
10 opinion is?  
11 MICHAEL A. PERSKY, M.D., WITNESS, RESUMED.  
12 THE COURT: Doctor, since you are still here,  
13 we are going to ask a couple of further  
14 questions.  
15 Go ahead, please.  
16 BY MR. WEINSTEIN:  
17 Q Doctor, I am going to ask you a question.  
18 Let me just ask the question and see what it is. I  
19 know you will tell us. The jury is not here and you  
20 will tell us straight on, the truth.  
21 THE COURT: He will when the jury is here  
22 too.  
23 MR. WEINSTEIN: I know that.  
24 THE COURT: Go ahead.  
25 MR. WEINSTEIN: Very good, Judge. Thank

1 we understood your ruling to be.  
2 THE COURT: No, my ruling is that from the  
3 chronic sinusitis, that has to be the cause of  
4 cancer.  
5 MR. WEINSTEIN: Right. So that's why I  
6 restricted it to that, but his opinion is that  
7 she can develop cancer, as I understand it, to  
8 the --  
9 THE COURT: You didn't even ask him about  
10 that. You are saying that if you asked him is  
11 there within reasonable medical probability is  
12 there a risk of developing lung cancer from  
13 chronic sinusitis he would say yes?  
14 MR. WEINSTEIN: Cancer to other areas of the  
15 respiratory system.  
16 THE COURT: From the chronic sinusitis?  
17 MR. WEINSTEIN: Yes. Yes.  
18 THE COURT: You didn't ask him that.  
19 MR. WEINSTEIN: I think what I should do is  
20 proffer it and see where it goes when he comes  
21 back. It will be one question basically.  
22 MS. WEINSTEIN: He is still here.  
23 MR. REILLY: I object. This gentleman is an  
24 otolaryngologist. He has just indicated he has  
25 never seen an instance of sinus cancer being

1 you.  
2 THE COURT: Go ahead.  
3 BY MR. WEINSTEIN:  
4 Q Doctor, I cut you off when you were talking  
5 about other parts of the sinuses. Could you tell me  
6 whether you have an opinion, within reasonable medical  
7 probability, of whether or not Ms. French can develop  
8 any other diseases to any part, any part of the  
9 respiratory system as a result of the condition that  
10 she was subjected to, that is, environmental smoke?  
11 MR. REILLY: I object, your Honor.  
12 THE COURT: Sustained. This is not what we  
13 are talking about, any other diseases.  
14 Q Well, can she develop -- in your opinion,  
15 does she have an increased risk to any area, to the  
16 respiratory system?  
17 A Well, again, I think --  
18 MR. REILLY: Your Honor, this has been --  
19 THE COURT: I will sustain the objection.  
20 Q What other risks are there, in your opinion,  
21 that can, in your opinion, develop from the exposure  
22 to second-hand smoke?  
23 THE COURT: No, that's not so. I know there  
24 is no objection. You can't ask that under the  
25 cases the way I understand them. That's why I

1 reviewed that and we talked about the chronic  
2 sinusitis.  
3 Q As a result of the chronic sinusitis  
4 condition and the irritants that she was exposed to,  
5 is there an increased risk of cancer?  
6 MR. REILLY: Your Honor?  
7 THE COURT: You can't add in there the  
8 irritants that she was exposed to.  
9 MR. WEINSTEIN: All right.  
10 MR. REILLY: On top of that, that question  
11 has been asked and he already answered it  
12 regarding sinus cancer. He already said there  
13 are no documented cases, he has never experienced  
14 it in his practice.  
15 THE COURT: I don't think you are asking  
16 what I thought you were going to be asking.  
17 MR. WEINSTEIN: What did you think I was  
18 going to ask?  
19 I know there are certain times --  
20 THE COURT: Go ahead. Is there anything  
21 else to ask?  
22 Q Doctor, do you have an opinion, based upon  
23 reasonable medical probability, as to any other --  
24 that as a result of her chronic sinusitis, that she  
25 can develop any other diseases, disease?

1 MR. REILLY: Objection, your Honor. This is  
2 exactly what he has tried five times now.  
3 THE COURT: Yes, I will sustain the  
4 objection.  
5 Q What, if anything --  
6 MR. REILLY: Your Honor, I would ask that  
7 this inquiry cease.  
8 THE COURT: I am going to let him make  
9 another attempt. He will consult with his  
10 colleagues here.  
11 Q Do you have an opinion as to whether the  
12 chronic sinusitis increases the risk of cancer in the  
13 body?  
14 A No.  
15 THE COURT: No, you don't have an opinion?  
16 THE WITNESS: No.  
17 THE COURT: That ends that subject.  
18 MR. WEINSTEIN: I will be candid and say --  
19 THE COURT: When we resume after lunch, we  
20 won't be going into this subject.  
21 How much more do you have of your direct  
22 examination aside from this, because you are not  
23 going to go into it.  
24 MR. WEINSTEIN: 10 or 15 minutes at most,  
25 but Judge, I have to show you something.

1 THE COURT: Wait. Can we excuse him?  
2 MR. WEINSTEIN: Yes.  
3 THE COURT: Thank you, sir.  
4 (Witness excused.)  
5 THE COURT: What are we bringing up now?  
6 MR. WEINSTEIN: There was an objection and  
7 you sustained unless you learned later, unless I  
8 provided to you the foundation for the question.  
9 THE COURT: What is it about, through this  
10 witness?  
11 MR. WEINSTEIN: Yes.  
12 THE COURT: Just tell me what it is.  
13 MR. WEINSTEIN: The question was I asked him  
14 in terms of a history, whether or not it is good  
15 medicine or consistent with the standard of care  
16 not to ask, for a doctor, I want you to assume  
17 Dr. Stammberger --  
18 THE COURT: The question was what did Dr.  
19 Stammberger say about this. The objection of Mr.  
20 Reilly was it was misinterpreting what  
21 Stammberger said.  
22 MR. WEINSTEIN: And I asked, he objected and  
23 said that there is no such thing or that there is  
24 no record. Here is my question.  
25 THE COURT: The question to who?

1 MR. WEINSTEIN: I asked Dr. Stammberger.  
2 THE COURT: That is the issue. You are  
3 looking at Stammberger's testimony?  
4 MR. WEINSTEIN: Yes.  
5 THE COURT: Go ahead.  
6 MR. WEINSTEIN: And he stated that he  
7 doesn't -- in the last ten years, he doesn't  
8 include the occupation of his patient.  
9 THE COURT: Is that what he said?  
10 MR. REILLY: Can I see the deposition?  
11 MR. WEINSTEIN: Yes. Whether they are a  
12 smoker or a nonsmoker, Judge.  
13 MR. REILLY: Marvin, listen.  
14 THE COURT: Wait a minute, Mr. Reilly.  
15 Mr. Weinstein, you have to read me what he  
16 said. You can't characterize it. The objection  
17 was you mischaracterized it and he may have been  
18 asking something about smoker or nonsmoker, not  
19 about their --  
20 MR. WEINSTEIN: I don't remember what my  
21 question was. I want to be able to ask this  
22 doctor about when you take a history, you find  
23 out whether or not the person is a smoker or not.  
24 THE COURT: You didn't ask this witness that  
25 question.

1 MR. WEINSTEIN: Well, I am going to.

2 THE COURT: So we will take up after lunch  
3 and see what you are going to be asking.  
4 Apparently Dr. Stammberger -- read what  
5 Stammberger said.

6 MR. REILLY: Here is the question that Mr.  
7 Weinstein tried to represent to the court. You  
8 see, Dr. Stammberger, and this is exactly what I  
9 thought this was about.

10 Dr. Stammberger testified at length that  
11 there was a period in his career when he asked  
12 people whether they smoked or didn't smoke  
13 because he wondered whether or not it played a  
14 role in the development of sinusitis.

15 Dr. Stammberger said for a decade, maybe  
16 longer, he took that information in, he assessed  
17 it and after a decade or longer of determining  
18 that it didn't make a dog-gone bit of difference,  
19 he stopped recording whether they were smokers or  
20 not because it didn't seem to him to have any  
21 effect on their sinusitis or not.

22 So Mr. Weinstein was going to rely on this  
23 inquiry:

24 "Q. So in the last ten or 12 years, as I  
25 understand it, you don't do, basically you don't

1 that with this witness.

2 You already know he found out what Ms.  
3 French's occupation was and so on.

4 MR. WEINSTEIN: It's even more important,  
5 occupation -- you know, we are dealing with  
6 airline --

7 THE COURT: We are going to have lunch,  
8 okay? We are going to have lunch and we are  
9 going to start at 1:45.

10 Do you think we will finish -- I think we  
11 might finish with this witness today and maybe  
12 start another witness is what I am saying, so be  
13 prepared.

14 Okay, we will be in recess until 1:45.  
15 (Luncheon recess at 12:30 p.m.)  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1 make any records or even or take" -- this is hard  
2 to read -- "in your history whether a person is a  
3 smoker, a nonsmoker or what their occupation is;  
4 isn't that correct?

5 "A. As usually I am one of the final  
6 instances they come to, no, I don't."

7 He had been saying at length, I mean, this  
8 is the 87th --

9 THE COURT: Let me say this. I am not going  
10 to let you ask that because I think it  
11 mischaracterizes Stammberger's testimony if in  
12 fact he made this whole other explanation about  
13 why he stopped taking the history of smoker or  
14 not smoker, because you would have to include all  
15 that.

16 Because what you asked him, as I remember,  
17 was is it bad medicine not to ask what occupation  
18 your patient has.

19 MR. WEINSTEIN: Which I did include in here.

20 THE COURT: Yes, but it's not the same  
21 question and apparently there was a history of  
22 it.

23 Don't ask that unless you want to get into  
24 all of the things that Dr. Stammberger said about  
25 it and, frankly, I don't see the point of doing